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Papers of the Historical Society of Delaware

II

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A D D R E S S

ON THE

History of the Boundaries

OF THE

State of Delaware

By HON. JOHN W. HOUSTON

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THE HISTORICAL SOCIETY OF DELAWARE

WILMINGTON, 1879

The following paper was read by Judge Houston, on the invitation of the  
Historical Society of Delaware, on Thursday, February 21, 1878.



## ADDRESS ON THE HISTORY

OF THE

# Boundaries on the State of Delaware

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GENTLEMEN OF THE HISTORICAL SOCIETY:

I have selected for the subject of my address on this occasion the history of the early and primitive questions in relation to the coterminous boundaries of this State and the States of Maryland and New Jersey, respectively. For, notwithstanding they have long since been practically and definitively settled, as we think, and Delaware, the oldest State in the Union (I say so, because she was the first to enter it), has now been in the undisturbed possession of all her present domain for more than a hundred years on the one side, and for nearly two hundred years on the other, yet, I am extremely sorry to say that, small as it is, the whole world, it seems, is still not fully satisfied that we are justly and rightfully entitled to quite all of it. Now, I must admit that it is not very pleasant, if it is not positively painful, to be obliged to make, at this late day, such a public confession; but for the melancholy proof of the

statement which I have just made I have but to refer you on the one hand, to the fact that the great State of New Jersey has actually sued us, within a year past, for a little piece of land entirely covered with water, and not much larger than the Pea Patch, before the highest tribunal in the country, where it is now pending; and on the other hand, to the interesting and elaborate address of an eminent citizen of the State of Maryland, delivered before this Society a few years since only, upon the original validity of the Lord Baltimore's title to the whole of it, under the royal grant contained and described in his letters patent for the Province of Maryland. I must, however, do New Jersey the justice to say that she is this time seeking, it seems, to recover water with its incidental rights of fishery, rather than land, or mud merely, as in the Pea Patch case. Now, before a tribunal of conscience and equity jurisdiction, my first defence to her present claim would be, that she already owns and is surrounded by more water than any other State in the Union, and has no further need of any more of that unstable element, until a second flood comes. And the same remark may be made with regard to fish also. And on that subject I would add, that it is unfortunately but too well known to all her neighbors that her remarkable and innate affinity for fish is already too strong and selfish, particularly as to shell-fish, and always has been; and that it ought not to be encouraged in this liberal and enlightened age of the world, and in a country like ours. Her claim is therefore clearly unconscionable, I think, on both of these grounds.

Although the questions presented are separate and dis-

tinct from each other one historical review will include both from the time the one in relation to the boundary between this State and New Jersey arises, which was some fifty years subsequent to the origin of the other in relation to the boundary between this State and Maryland; but in the consideration of the latter we must necessarily commence the review with the date of the first settlement by a Christian people within the limits of our State, and with the date of the letters patent to Lord Baltimore for his Province of Maryland, together with the petition on which they were issued, and the terms of it, describing the lands applied for in it, and which were granted to him pursuant to the description. For upon these facts alone that question originally depended.

Prior to that period, and even to the discovery of our bay and river, or of any part of our coast from the capes of the Chesapeake to Cape Cod, the English had discovered and claimed all the coast of New England north of the latter cape, and had also discovered and claimed all the coast from the capes of the Chesapeake to the coast of Florida; and although the intervening portion of it had not yet been actually discovered by any English or other European navigator, the Crown of England had already made grants to its subjects of the whole country, extending from North Carolina to the northern limit of New England, with a view to the speedy colonization and settlement of it; and under one of those early grants to the London Company, by name, the colony of Jamestown, Virginia, had been planted on the southern shores of the Chesapeake Bay as early as the year 1607, and three thousand miles of its

shores, and of the rivers flowing into it, had been explored as early as the year following. In the year following that, or in 1609, the fearless and intrepid navigator, Captain Henry Hudson, an Englishman, but then sailing under the flag of the United Netherlands, and in command of a ship belonging to the Dutch East India Company, in seeking the capes of the Chesapeake with the view of touching at Jamestown for provisions, missed them, and bearing northward along the coast, in full view of the land and the long line of lofty forests in full leaf which then overshadowed the solitude of the unknown shore, on the 28th day of August in that year discovered for the first time in the annals of history the capes of the Delaware, which he entered about noon, and, after spending the rest of the day and night on the bosom of our bay, sailed early the next morning, and, still standing northward along the coast, in six days afterwards discovered and entered the Bay of New York. He lingered there for several weeks, and long enough to explore the surrounding shores and the Hudson River as high as the site of the city of Albany.

The report of his discoveries, which reached Holland before the close of the year, produced such an impression in Amsterdam and other cities, that steps were promptly taken by individuals on their own account as private ventures, to open a direct trade with the natives of these newly-discovered regions, and commencing as early as 1610, they had established in five or six years two very considerable trading-posts and settlements, the principal one on Manhattan Island, and the other on an island in the Hudson not far below the site of Albany; and as small forts of rude

and primitive construction were speedily erected for the defence of the posts and the stores and goods kept in them, the former was named Fort Amsterdam and the latter Fort Orange. In the mean while, the Delaware Bay and River had been explored as high as the mouth of the Schuylkill, and the Connecticut River had been added to the Dutch discoveries soon afterwards, and the Hudson and the Delaware had already been baptized in their conception and their language as twin rivers, by the name of the North and the South River, respectively. As early as 1620 the English had planted another colony at Plymouth, in Massachusetts, and from the date of the first occupation by the Dutch of the intervening country between that and Jamestown, in Virginia, they had persistently denied their title to it, or any part of it. In 1611, Lord Delaware, governor and captain-general of the Jamestown colony, before any intelligence of Hudson's discoveries had reached the colony, sailed thence in the month of March in that year for the West India Islands on account of his health, which was much impaired, and, encountering heavy head winds soon after leaving the capes of the Chesapeake, was driven northward, when the capes of a new and entirely unknown bay to any one on board the ship were discovered, and which they entered, and where they remained for a day or two, anchored under the lee of the southern cape awaiting a change in the wind, and which in honor of his lordship was then named Delaware Bay, and which it has retained ever since among the English. It is a little remarkable that, being so near the capes of the Chesapeake, and particularly with the activity and enterprise which had been so early

exhibited in the exploration of the shores of that bay, the discovery of ours should have been so purely accidental in both instances, and even more so in the second than in the first.

I do not deem it necessary for my purpose to notice the Dutch settlement or colony planted by Captain Cornelius Mey at Nassau on the Delaware River, near Gloucester Point, in 1623, because it was on the eastern side of the river and not within our limits, and could never have had any material bearing on the question involved between the Province of Maryland and the three lower counties on the Delaware which now constitute our State. Besides, I have reasons for believing that there were Dutch traders settled on the Hoorn Kill, now Lewes Creek, as early as 1622, although no colony or regular settlement transplanted from Holland had been founded there so early as that date. There was a permanent native settlement or Indian village on the banks of it when the bay was first discovered, and according to the description we have of the creek fifty years afterwards, it deserved to be called a river instead of a creek, with a fine roadstead within the mouth of it for the ships of that day of all burdens, and none like it for safety in all the bay, the right channel for sailing up the bay passing it, and only two leagues above Cape Henlopen; for being within so short a voyage of Fort Amsterdam, and as the sole object of those early Dutch adventurers was trade and traffic with the natives, chiefly in furs and peltries, and game of all kinds was then abundant in the surrounding regions, the opening of such a market would soon attract the notice and attention of the natives and the traders alike, and

draw them to that Indian settlement for such purposes. That a casual intercourse of that kind first sprung up at a very early period between that point on our shores and the Dutch traders on Manhattan Island and the Hudson, I think there can be no question, and which not only warrants the opinion I have expressed, that there were such settlers there as early as 1622 or 1623, but it accounts for the more important fact that the Hoorn Kill soon began to attract the attention of a class of gentlemen in Holland who looked to a larger business that might be established there with success and with much greater profits, as they imagined, than any trade with the natives there or on the Hudson could possibly afford to such as were engaged in it. And it was this that led such men of means as Messrs. Godyn, Blommaert, Van Rensselaer, De Vries, and a considerable number of others of like intelligence and means in Amsterdam and other cities in Holland, as early as 1629, to form a private company, or copartnership, to purchase all the salt-marsh skirting our side of the bay-shore from Cape Henlopen to Bomby Hook Roads, for the purpose of establishing a whale-fishery on our bay, and in connection with it, and as a part of the enterprise, to plant a Dutch colony on the Hoorn Kill. They, or some of them at least, also probably aspired to the honor and dignity of becoming in time Dutch patroons on the shores of the Delaware, and they would have well deserved the full fruition of their ambition had they succeeded in the undertaking. But as Dutchmen generally move with care and caution in all great enterprises, I have no doubt they were a good while in gradually growing ripe for such a

grand oil speculation, and I have as little doubt that there were at that day a good many large fish in the Delaware Bay, and among them not a few whales of very respectable proportions. They had enjoyed the undisturbed possession of its waters for so many ages that such a thing was certainly possible. But I suspect that the Dutch traders I have spoken of, and the Dutch sailors who had become familiar with our bay prior to that time, had been so long indulging in stupendous fish-stories both as to the multitude and magnitude of them, as to have quite upset for the time the mental balance of those gentlemen. It is certain, however, that they embarked in the enterprise with the confident expectation of making a success of it, and De Vries, who had filled with credit to himself a post of respectability in the military service of the Netherlands, and had recently returned from a protracted residence in the East Indies, was selected and solicited to assume in person the management of the enterprise as the director-general of the colony. They also had sufficient encouragement in their undertaking and influence with the Dutch West India Company, which despatched three ships early in the spring of 1629 to Fort Amsterdam, to procure an order that on their arrival there one of them should proceed with an agent of theirs to the Hoorn Kill to complete the purchase of the salt-marsh mentioned from the Indians of the village. The ship arrived there as ordered in the latter part of May, and on the first day of June in that year the purchase was duly made, and the sale was afterwards acknowledged by a delegation of the Indians of the village before the director-general and council of the New Netherlands,—



the general name which all their territory had now received, —in Fort Amsterdam, on the fifteenth day of July, 1630. And to show still further the extent and magnitude, as well as the gravity and importance of this great enterprise in the estimation of the projectors of it, they soon after purchased from the Indians on the other side of the bay a long and narrow strip of land extending from Cape May several miles up the shore, and which would look as if they even contemplated making a *mare clausum* of the Delaware Bay, so far, at least, as the business of whale-fishing in it was concerned; and when we consider the characteristic trait of the Dutch at that day, and what rigid monopolists they were in regard to trade in all their foreign possessions, it is not a violent presumption perhaps to impute such a motive to them. They were well informed, however, although none of them had ever visited America up to that time, of the character of the tract they were about to purchase, that it was an almost continuous body of salt-marsh, extending from Cape Henlopen to the mouth of the river, between forty and fifty miles in length, with a mean breadth or depth back to the mainland of from two to three miles, and that it, of course, skirted the whole bay-shore on its southern side; and therefore it has occurred to me that, with the sanguine hopes and expectations then evidently entertained by them in regard to the results of their immediate undertaking, there was probably an ulterior design also on their part ultimately to reclaim it by embankment, and which was by no means a visionary conception in the minds of such men bred and born in Holland. And had it been the destiny of that remarkable race to which they belonged to retain

permanently the dominion which it had then so recently acquired in certainly one of the very finest regions in America, may I not ask how long would that vast expanse of salt-marsh have been doomed to look both to heaven and man in vain for such an improvement?

There is some uncertainty as to the year in which the colony first projected and planted within the limits of our State arrived on the banks of the Hoorn Kill. There is no doubt, however, that it was as early as the spring of 1631, although De Vries himself, the director-general of it, in the incidental allusion to the massacre of it by the Indians, contained in his letter of indignant protest and remonstrance written some ten or twelve years after that event, and addressed to Director-General Kieft of the New Netherlands, and then residing at New Amsterdam, against the design he had formed of slaughtering the Indians at Pavonia in revenge for the brutal outrages perpetrated by them on the Dutch settlers in that vicinity, speaks of it as having occurred in 1630. The passage to which I refer is brief, and I will repeat it: "Consider, sir, what good will it do? We know that we lost our settlement at the Hoorn Kill in 1630 by mere jangling with the Indians, when thirty-two of our men were murdered." De Vries came with it as director-general and in command of the expedition from its departure from the shores of Holland. His birth and residence was in the little city of Hoorn in that country, a seaport on the Zuyder Zee, and it is said that he conferred the name of Hoorn Kill on the creek in honor of it. The colony certainly consisted of a small Christian community of European settlers expressly formed and organized for colonizing that portion of the

southern shores of the Delaware Bay, and which was not only done with all the regularity and method usual in such cases, but its arrival on our shores was preceded by a larger purchase of land from the natives for the purpose of its plantation than had perhaps occurred before in the history of any of the English or Dutch settlements. Including De Vries, it must have numbered on its landing at least thirty-three men, to say nothing of women or children. A general storehouse and a stockade fort, named Fort Oplandt, was erected on a well-selected site on the northern bank of the creek, not far above the mouth of it, and a body of land adjacent to it, pronounced by enthusiastic Dutch admirers several years later to be the best in all the New Netherlands, was laid out for the habitation and cultivation of the settlers, and named Swandale in compliment to the natural rights of the large number of swans that were now to be dispossessed of it as a favorite bay-side resort for them at that season of the year. But De Vries was obliged to leave it before the close of the summer and return to Holland on business connected with the enterprise. He had gained from the beginning of the settlement the esteem and respect of the natives, and left it with relations of entire concord and amity subsisting between them and the colonists; but for reasons on which neither history nor tradition sheds any further light than we have from the brief passage which I have just read from his letter referring to it (for the account given of it to him by a native on his return to the Hoorn Kill was evidently a fiction of the Indian's imagination purely), they were suddenly assailed and totally massacred by the savages before the fall of the leaves of that season.

while at work in their fields, with the exception of two, who were butchered with like barbarity in the storehouse. If it occurred in 1631, the intelligence of it must have reached De Vries very soon after his arrival in Holland. He was, however, so shocked and discouraged by the disaster that he was unable for a considerable time to pay any attention to business; and yet there is no doubt of the fact that he was back again at the Hoorn Kill with several new colonists from Holland early in December, 1631, prepared to enter by the opening of the next spring upon his novel experiment of whale-fishing in the Delaware Bay, and on what is now called Lewes Beach, and which was industriously prosecuted through the spring, summer, and fall of 1632, not without some success, for a considerable quantity of whale oil was shipped by him during the season to Amsterdam, but the business having proved more expensive and less profitable than was expected by him, it was not resumed the following year; and early in the spring of it De Vries himself removed to the North River, where at a later period he found congenial employment in establishing several Dutch settlements, but retaining his interest in the lands purchased at the Hoorn Kill and on our bay-shore until the sale of it by the copartnership to the City of Amsterdam in 1635.

If I have detained you too long with this tedious and protracted detail of the plantation of De Vries's colony, as it has generally been styled, on the Hoorn Kill, the great historical importance of it will excuse me when I inform you that it was the sole fact on which the question of title to the three lower counties on the Delaware, now constituting our State, between Lord Baltimore and the Dutch of the New

Netherlands in the first instance, and subsequently between his lordship and William Penn, originally and finally depended for its solution during a period of just one hundred years thereafter, or up to the year of 1732. the date of the first agreement entered into between their respective heirs-at-law for the amicable settlement of it by mutual compact between the conflicting claimants. For, with the exception of that settlement, and with all the light and information which the most patient and thorough historical research and examination has in the mean time shed upon the subject. I am constrained to say that there is no good reason for believing that there was a solitary Christian, or child of civilization, within the limits of what now constitutes the State of Delaware, or anywhere west of the Delaware River, on the 20th day of June, 1632, nor until nearly six years after that date.

In the due course and order of historical events which now follow in quick succession, I must next pass from the shores of the Delaware to those of the Chesapeake. In the year 1632, George Calvert, Baron of Baltimore, having three years before visited the English settlements in Virginia, and made some exploration of the Chesapeake Bay, presented a petition to his Majesty Charles I. for a grant of lands in that region of the country lying between the 38th and 40th degrees of north latitude, in which he stated that it had not up to that time been planted by any Christian people, although it was then inhabited in some parts of it by a certain barbarous people, having no knowledge of Almighty God. The application was graciously entertained, and a royal order was given for the preparation of letters

patent for the grant pursuant to his petition, and which were soon afterwards prepared with a recital referring to his petition and the representation contained in it, that it was a region of country hitherto uncultivated, and partly occupied by savages having no knowledge of the Divine Being, and with the boundaries of it described as all that part of the peninsula or chersonese lying in the parts of America between the ocean on the east and the Bay of Chesapeake on the west, divided from the residue thereof by a right line drawn from the promontory or headland called Watkin's Point, situate on the bay aforesaid, near the river Wighes on the west, unto the main ocean on the east; and between that boundary on the south, unto that part of the bay of Delaware on the north which lieth under the 40th degree of north latitude from the equinoctial where New England is terminated; and all the tract of that land within the metes underwritten, that is to say, passing from the said bay called Delaware Bay in a right line by the degree aforesaid unto the true meridian of the first fountain of the river of Pattowmac, thence verging towards the south unto the farther bank of the said river, and following the same on the west and south unto a place called Cinquack, situate near the mouth of the said river where it disembogues into the aforesaid bay of Chesapeake, and thence by the shortest line unto the aforesaid promontory or place called Watkin's Point.

It was well known at that time that a right line drawn as described, from Watkin's Point on the Chesapeake Bay due east across our peninsula to the ocean, would be directly under the parallel of the 38th degree of north latitude. No

part of the Delaware Bay, however, is as far north as the 40th degree, nor is any part of the Delaware River below the city of Philadelphia. And this clearly shows that his lordship was mistaken at the very outset as to the distance in degrees from Watkin's Point to Cape Henlopen, and could not have known that the 40th degree of north latitude would include within his grant not only the whole of the peninsula north of Watkin's Point, and the whole of the Delaware Bay, but also nearly one-half of the State of New Jersey. But this may be in some degree accounted for by the well-known fact that even British sovereigns and British noblemen at that day supposed that a degree of latitude, as far north of the equator as those named in the patent, measured but sixty miles to the degree. For it is but reasonable to presume that Lord Baltimore dictated the description of the boundaries embodied in it. Before, however, the patent was issued Lord Baltimore died, and pursuant to the order of the king the necessary alterations were made in it, and on the 20th day of June, 1632, the patent was issued to his eldest son and the heir-at-law of his title and estates, Cecilius, Lord Baltimore. It was named in the patent the Province of Maryland at the instance of the king in honor of the queen, Henrietta Maria.

I deem it proper here to observe that by the law of nations as then recognized by the maritime powers of Europe, and which the recent discovery of the New World rendered more important than it had ever been before, that no discovery and exploration merely of a new island or a new country inhabited by barbarians only, even when followed by a formal grant or cession of it from the sovereign under

whose flag or auspices it had been made, could confer any right or title to it upon the discoverer until he took possession of it, or some part of it, but when that had been done his title would commence from the date of his grant; and that possession should follow discovery to give a title in all such cases.

Lord Baltimore had contemplated on the receipt of his patent visiting his province in company with the first settlers despatched to it, but circumstances prevented it, and under his authority and appointment his brother, Leonard Calvert, conducted the expedition organized for the purpose of taking formal possession of it under his letters patent, and of planting the first settlement under it in the province. It consisted of some two hundred Englishmen, the most of them possessed of considerable, and a few of very handsome means, the design being to found a miniature government in the province on the model of the British constitution, with an order of nobility possessing large landed estates. The expedition sailed from England in a ship named the *Ark* and a pinnace belonging to Lord Baltimore of about fifty tons named the *Dove*, and after a tedious voyage by the Canary Islands and the southern passage of that early period, arrived in the Chesapeake, and made their first settlement on the Potomac River, not far above the mouth of it and between it and the western shore of the bay, at a place which they named *St. Mary*, on the 27th day of March, 1634; and Leonard Calvert now assumed the office of first governor of the province.

Virginia had long prior to the date of Lord Baltimore's patent, claimed not only the whole of the Chesapeake Bay



and the regions surrounding it, but even as far as the 41st degree of north latitude, and as early as 1627 the governor of that colony had granted to one of the early settlers of Virginia, William Claybourne, who had been a member of the council and the secretary of the colony, authority to discover the head of the bay, or any part of Virginia lying between the 34th and 41st degrees of north latitude, and in 1631 Charles the First had granted him a royal license to make discoveries and to traffic with the natives, under which he had in that year with a party of men from Virginia taken possession of Kent Island in the Chesapeake Bay, and almost in the centre of the Province of Maryland, and had established a trading-post on it, and had been so in possession of it from 1631 until the arrival and settlement of the first provincial colonists under Governor Calvert at St. Mary's. The first question, however, that was raised as to the legal right and title of Lord Baltimore to the territory designated and described in his patent was between him and the authorities of Virginia, and went to the whole of the grant, for by them the validity of it was denied in toto. The legal controversy which arose out of it between them ultimately went to the privy council of the king for adjudication and settlement, but they declined to entertain it, and left the parties to their remedies by due course of law. Claybourne had also from the first repudiated and refused to recognize the validity of the grant and the authority and jurisdiction of the government of the province over Kent Island, and the governor having within one year after the settlement issued an order for his arrest, a hostile collision occurred between their respective armed forces, consisting

of two small vessels sent against him by the governor, and one cruising under the orders of Claybourne, in which one man on the governor's and several on Claybourne's side were killed. The latter, however, was defeated, and was obliged to flee for refuge to Virginia, whereupon commissioners were sent from the province to demand him of the colony, but the governor of it refusing to surrender him, the assembly of the province proceeded to seize and forfeit his property on the island, and he was also indicted, tried, and convicted in his absence of the combined crimes of murder, piracy, and sedition. He afterwards went to England and presented a petition to the king, Charles the First, setting forth his grievances and praying for the redress of them, which with the testimony produced in support of them, made such an impression on the mind of his Majesty that he severely reprimanded Lord Baltimore for having, contrary to his commands, dispossessed him of Kent Island and slain several of the inhabitants of it. Nevertheless, in the following year the lords of the committee of the privy council of the king for trade and plantations rendered a report in favor of Lord Baltimore's title. And yet even this did not terminate the angry strife and contention, for serious political disturbance and commotion afterwards arising in the province, Clayborne, who had in the mean time returned from England and retaken possession of Kent Island, availed himself of the occasion to manifest his spirit of resistance again to the authority of the proprietary, and the effort of the governor to dispossess him not only failed, but Claybourne and his partisans, with the aid of the political malcontents referred to, compelled the governor of the province in turn to flee

for refuge to Virginia, and thereby gained for a time the complete control of the government of it. This occurred in 1645. But Governor Calvert returned with a sufficient military force to re-establish his authority in 1647, and Claybourne was again driven from the island. Two years later the execution of Charles the First followed, and the Commonwealth of England was established under the protectorate of Oliver Cromwell, and in 1652, commissioners having been sent from England to Virginia and Maryland to reduce them to obedience to the Commonwealth, with whom Claybourne was associated, he again regained possession of the island. The authority of the proprietary and his government in the province was now completely superseded and suspended, and upon the effort of Lord Baltimore to recover it, the most serious collision and conflict of arms which had yet occurred in the province ensued between his forces and those of Claybourne and his political partisans in 1655. It was successful, however, although it was not until the year 1658 that the authority and government of his lordship was completely restored in his province.

Among the many evils and misfortunes resulting to his lordship from such a state of affairs in his province was the notoriety which it gave from the start to the question in regard to the validity of his grant, and the unfavorable impression which it produced upon the mind of the king himself on discovering for the first time, under such painful circumstances, the melancholy fact that such a grave and fatal mistake had been committed in issuing the royal patent to him on the faith of the representation contained in the application, that there were none but Indians or barbarians

then inhabiting any part of the territory solicited and granted; and I think it will hereafter clearly appear in the further development of the history of the question that his lordship's interests in the province never recovered from the unfavorable effects then produced in the highest places in England by the discovery of this grave and serious blemish in the very inception of his title.

I will now return to the history of the settlements on the Delaware, and after having traced the history of events on the Chesapeake, so far as it is necessary for my present purpose to notice them, from the year 1631 to 1658, the first remark which I have to make on returning to our own shores is, that there is a singular coincidence, in the chronology at least, of the principal events in the cotemporaneous history of the two States during that early period, notwithstanding the marked difference in the European races which they respectively concern. In the first place, the first civilized settlement within our limits, and the first similar settlement within the limits of Maryland prior to the date of Lord Baltimore's patent, were almost simultaneously made by different European races and under different European sovereignties; and while our history is subsequently characterized during that period by strife and contention of a higher historical grade and dignity between rival European races for the possession of and dominion over our territory, so far as the epochs or eras (if they deserve such an appellation) of each is concerned, they were almost as simultaneous, although during the greater part of that period the settlers on the Delaware and the settlers on the Chesapeake within the limits of Maryland had no intercourse, or acquaintance

even, with each other, and knew about as little of each others' troubles or disputes as if they had been settled on the opposite sides of the equator, and thirty-eight or forty degrees from it. Both the Dutch and the Swedes knew from the time almost of their arrival within our limits, of Jamestown and Virginia, and of the claim of that colony to all the territory on the Delaware, but I question if any one of either race had ever heard of either St. Mary's or Kent Island until after they had ceased to attract any particular attention on the Chesapeake. De Vries was fully informed of the English claim by the governor of Virginia on his visit from the Hoorn Kill to Jamestown in the summer of 1632, and the Swedes learnt of it in like manner when their first expedition touched at Jamestown in 1638, on their voyage from Sweden to our shores.

The first event which I shall have occasion to notice in the cotemporaneous history of the two States, after the settlement of De Vries' colony on the Hoorn Kill, is of the date of 1638, and which occurred during the progress of the first controversy between Lord Baltimore and Clayborne in regard to his title to Kent Island, and in the same year in which his Majesty rebuked his lordship for dispossessing him of it. The Dutch West India Company, which had been incorporated by the States-General of the United Netherlands as early as 1621, for the purposes of colonizing the Dutch possessions in this country and promoting trade and commerce in all the regions of the New Netherlands, as those possessions were then for the first time formally denominated, had so long neglected to make any settlement, or to take actual possession of any part of the

country on the western side of the Delaware above the mouth of the river, that it ultimately led to an effort on the part of one of the original promoters and most active members of the company, who had become dissatisfied with the management of its affairs, to find some other power in Europe to undertake the enterprise, and it was such a motive that prompted Mr. William Unclinx, of the City of Amsterdam, to repair in 1624, to the court of the young and able sovereign of Sweden, Gustavus Adolphus ("of ever-blessed memory," as the venerable Campanius invariably and reverentially styles him whenever he has occasion to mention his illustrious name in his Delaware diary, written several years after his untimely and lamented death on the battle-field of Lutzen), and to submit to him a plan for the formation of a Swedish West India Company for the express purpose of colonizing the neglected regions on the Delaware. That young and magnanimous monarch embraced the flattering overture, I apprehend, with too much ardor and alacrity to inquire sufficiently into any mere legal impediments or obstacles which might lie in the way of such a grand and noble proposition; or, if he did so, the specious and wily Dutchman and shrewd ex-member of the Dutch West India Company may have soon satisfied him that there were no obstructions of that nature in the way of the enterprise, and that the Dutch company already had more land than it either wanted or needed north and east of the Delaware. A West India Company similar to that in the Netherlands was accordingly incorporated and organized without delay in that kingdom; and with the animated spirit and enthusiastic emulation now abroad in behalf of

the measure, and the influence of the king's example, who subscribed with royal liberality to the stock of it, princes and prelates, noblemen and commoners, and men of all classes, as well as ladies of the highest rank, vied with each other in responding with like promptitude and liberality, to the cordial recommendation of their sovereign in behalf of it. It was the first novelty of the kind perhaps, which had ever caught and captivated the fancy or imagination of the Swedes to such a degree, and compared with which, to them at least, according to the accounts we have of it, the enchanting hues and evanescent splendors of all later South-Sea bubbles must have seemed but pale and dim. Before, however, all the necessary preparations had been completed by the company for the dispatch of the first expedition of colonists from Sweden to the Delaware, their young and gallant king, who was now acknowledged and hailed with universal acclaim by the Protestants of Germany as the royal champion of their cause, was suddenly drawn into the vortex of that memorable religious conflict of nations known as the Thirty Years' War in Europe, and all further proceedings by the company and the government for the plantation of the colony were interrupted and suspended, until several years subsequent to his fall in the battle before mentioned, in November, 1632, after a rapid series of brilliant and surprising victories terminating in that of Lutzen, although he lost his life in it, which has rarely, if ever, been surpassed in the wars of Europe. But, as if forewarned by some presentiment of his approaching doom, amidst the perils and vicissitudes of the war in which he was about to engage, he had prepared in advance a last will and testament, con-

taining particular instructions in relation to the guardianship and education of his only child and heir to his crown, a young and tender daughter, and with it another paper addressed to his prime minister, Chancellor Oxenstiern, a man of great ability and virtue, as well as devotion to his king and country, enjoining upon him in any event or contingency which might befall him personally in the war, as a duty not to abandon this great enterprise in which he felt so much interest, but to see the design of it fully carried into execution pursuant to the directions given in the paper, and in accordance with the views which he had often before communicated to him on the subject. But it was not until after the war in which he fell had been terminated with the brilliant success with which it had been begun, under the able ministry of Oxenstiern, and the command of generals in the field worthy of the school in which they had been trained under their late king, and not until five years after his demise, that the chancellor was prepared to enter upon the discharge of the grave duty thus enjoined upon him. Since the death of the king the government of the country had been vested in a council of regency during the minority of the young queen, of which Chancellor Oxenstiern was president, and who was also one of her guardians.

The interesting gentleman from Amsterdam and dissatisfied ex-members of the Dutch West India Company before referred to, and who had been so successful in originating this rival company at the court of Sweden, had also by this time passed from the stage of action and the scene of his glory to



The undiscovered country, from whose bourne  
No traveler returns.

And yet, strange to say, just about this time while Chancellor Oxenstiern was preparing to institute active proceedings in the undertaking, another gentleman from Holland, of still greater eminence, and still more familiarly acquainted with the affairs of the Dutch West India Company and their possessions in the New Netherlands, turns up in his place at Stockholm and the court of Sweden, and also submits a plan for colonizing the western banks of the Delaware, under the charter of the West India Company of that country, and modestly suggested his willingness to assume the duties and responsibilities of conducting their first colony to our shores as the director-general of it. And this distinguished Dutchman was no other than Peter Minuitt, Esq., late director-general of the New Netherlands under the Dutch West India Company, from 1624 to 1632, eight consecutive years. He had, of course, during that time become very familiarly acquainted with all their possessions, and their title and claims to the same, both on the North and the South River, knew all about the settlement of De Vries's colony on the Hoorn Kill, was director-general and president of the council of the company when the Indian delegation from the village there appeared before it in Fort Amsterdam in 1630, to acknowledge the sale of the salt-marsh from Cape Henlopen to the mouth of the river to the Dutch purchasers before mentioned, and was still in office and residing there when the colony was massacred. He had, however, been removed from office without his own approbation and consent by the company in 1632. The

chancellor was very favorably impressed with his manners and address and general intelligence, and particularly with his familiar knowledge of the geography of the region, its soil, climate, and resources, and the character and relations of the aboriginal races, or Indian tribes, inhabiting it, and even esteemed himself fortunate in finding a gentleman so admirably qualified to fill the responsible position for which he had so generously tendered his services; and he was accordingly in due time appointed director-general of New Sweden, that name having already been conferred on the country designed to be settled under the charter and grant of the company, and to be held and considered as an appendage to the crown and kingdom of Sweden.

The first expedition formed for colonizing it consisted of some fifty settlers duly provided and furnished for the purpose, which embarked from Sweden under the immediate command of the director-general, Mr. Minuitt, in an armed ship of the navy and a transport, and after a protracted voyage of several months by the southern passage and a short stoppage at Jamestown, in Virginia, entered the capes of the Delaware on a bright and balmy day in the month of April, 1638. They came in with a fine breeze from the southeast and all sails spread to it, and gliding directly past the mouth of the Hoorn Kill, stood up the bay some fifteen miles farther, when the anchors were dropped, the sails were furled, the boats were got out, and the whole community was in due time rowed ashore at a much less convenient and inviting landing-place, but in a perfect transport of rapture and delight, to refresh and regale themselves for a few hours on that genial and delicious day, upon what

is now termed Mispillion Point. It is a long, low, flat, and sandy cape jutting well into the bay when viewed from Cape Henlopen and the beach of Lewes and the mouth of the creek, and could have possessed even at that day no attraction beyond the fine view which it commanded of the crescent curvature of the western shore towards the Hoorn Kill and Cape Henlopen, the whole of the bay below and the ocean vista through the capes, of which one would suppose they had already seen enough in the last five months to be sick of the sight of it for as many more at least; and yet so charmed and enchanted were they with the spot, that they could find no term sufficiently graphic and poetical to express their unbounded admiration of it short of Paradise itself, and therefore they at once named it Paradise Point. There was one, however, in that happy company, I apprehend, as he stood in their midst and looked towards the Hoorn Kill and recalled the recollection, yet fresh in his memory, of the massacre of the Dutch colony planted there, and of the sale of the very land then beneath his feet to the founders of it with his own sanction and approval but a few years before, who must have been wholly unable to so far surrender himself to the common illusion prevailing around him, as to have felt for a moment that he stood on anything like holy ground, so far, at least, as he was concerned; and that was Peter Minuitt himself, the commander of the expedition, and now the director-general of New Sweden.

But the site of their first settlement in this country had been selected before their embarkation from Sweden, and resuming their voyage up the Delaware, they entered your beauti-

ful river, the Christiana, even then, by the broad expanse of its waters, at least more deserving of being so called than now, and sailing on some two miles or more, landed upon its northern bank, on a firm and fast foundation in nature, if not in law, at a place then named and ever since called, I believe, The Rocks, and which furnished a very convenient wharf for the purpose already made to their hands. And now as we survey in imagination, at this late day, all the virgin features and picturesque beauty of the natural scene which here opened for the first time to their astonished vision, what must have been the measure of their admiration and delight when they compared and contrasted it with the scene which they had just left below! And if but the day before they imagined themselves almost in heaven, must they not have thought this nothing less than a sudden translation to the very empyrean of the gods themselves, if any of them had ever read of such place in classic story! Minuitt had never visited the locality before, so far as we are informed, but that he had learned of it from some one who had seen it, and who was capable of portraying the scene to him with some degree of justice and fidelity, there can be no doubt—the winding Christiana with its green meadows on the one side, the rocky banks and the water-power of the romantic Brandywine on the other, their confluence in the foreground of the landscape, and flowing with united volume in full view to the broad bosom of the majestic Delaware; all this and doubtless much more had been faithfully depicted to him, and he certainly exhibited as much good taste as sound judgment in selecting it for the site of his first Swedish settlement within our limits. This settlement,

the second made within the limits of our State, became in the spring of 1638 the feeble beginning of your fair and beautiful city of Wilmington, and which is all that was required to crown and adorn the natural embellishments and advantages of the original site with the flowers, fruits, products, and structures of art, labor, culture, commerce and manufactures, civilization and Christianity, to make it what it has since become, one of the fairest and finest cities of its class in our whole country.

The first thing in order after they had landed upon its banks was to find a suitable name for your river in their own vernacular tongue. And where or in what language could they have found one more beautifully appropriate on such an occasion than the chaste and sweet and sacred name of Christina, in honor of their fair young queen, sole daughter of the house and heart of their beloved and lamented sovereign, still as much a martyr to the sacred cause of their religious faith, as a glorious monarch in their estimation, then in the twelfth year of her minority, and an object of tender regard and solicitude to every loyal Swede the world over? She was only six years of age when her father fell at Lutzen, but was now pre-eminently distinguished for all the brilliant bloom and promise which so well beseeemed the rosy dawn of such a splendid career and destiny as then lay in prospect before her, only to be, to the grief and astonishment of all her subjects, so soon and so strangely and mysteriously darkened, disappointed, and with thickening clouds overcast after ascending the throne, as never was that of queen or royal princess before or since in the history of the world. But as a just and meri-

torious tribute to the memory of her better and brighter and more happy days, is it not to be regretted that it was not retained in all its pristine purity and beauty as the true name of it to this day?

The next thing was to erect a fort on the banks of it at or near The Rocks, on which the name of Fort Christina was bestowed, and which became for many years afterwards the only name by which the settlement formed about it was called and known. The director-general had his permanent residence in it until his death, three years afterwards. He had hardly begun to build it, however, before he received, from the director-general of the New Netherlands residing in Fort Amsterdam, a formal and solemn protest against the intrusion, encroachment, and aggression by the Swedes upon their territory on the South River, and asserting in the strongest terms their unquestionable right and title to the whole South River of the New Netherlands, both the upper and lower parts of it, and denouncing the consequences of his own conduct against him to the last extremity. But Minuitt neither replied to it, nor paid any attention to it. The former, however, proceeded forthwith to repair and re-garrison the Dutch Fort Nassau, on the opposite side of the Delaware River, just below Gloucester Point, and to maintain it in a proper state of defence. A few other sparse and scattering Swedish settlements followed the first, but all of them, on the same side of the Delaware, were made above the Christina, and between it and the mouth of the Schuylkill, chiefly in the vicinity of Upland or Chester, and what is now marked on our maps and called the Lazaretto, but none whatever were made below the Christina, although

the colonial authorities of New Sweden claimed to have acquired, as early as 1642, the Indian title, by purchase from the natives, to all the country west of the Delaware from Cape Henlopen to the falls at Trenton, and that they had rightful dominion and jurisdiction over it.

A controversy, however, not only at once arose between the Dutch and the Swedes in regard to their respective rights and claims to the territory, but a more serious dispute and contention soon followed it in relation to the trade with the natives on the Schuylkill and the western side of the Delaware above Fort Christina, and the control of the navigation of the Delaware River in connection with it, the Swedes progressively and practically growing bolder in the assertion and exercise of both, as rights exclusively belonging to them, and which were sometimes attended with acts of violence and gross aggressions upon the Dutch; and for these pretensions on their part it was found that the position of Fort Christina, being below that of the Dutch Fort Nassau on the eastern side of the Delaware, afforded them material support and advantage. This consideration at length induced Peter Stuyvesant, who in the mean time had been appointed by the Dutch West India Company the director-general of the New Netherlands, and had taken up his residence in New Amsterdam, as the settlement at Fort Amsterdam was now named, to make his first visit to the South River and to Printz, then governor of New Sweden, and residing in some state on Tinicum Island, with a view, if practicable, to effect some accommodation of these increasing difficulties, and if not, to erect a fort on the same side of the Delaware and below Fort Christina,

to counteract the advantage which the Swedes had derived from it in the dispute about the navigation of the river, and also to recover without any further hostile movement or demonstration the command of the river and the dominion of the whole country on the western side of the bay and river from the Christina to Cape Henlopen. He failed, however, in the first object of his visit, and as the whole country from the Christina to the Hoorn Kill was still an Indian wilderness, he made a hasty but sufficient survey of the river to satisfy himself that the point of land on which New Castle several years afterwards grew into a settlement of so much note and promise, as not only to eclipse the feeble and flickering lustre of Fort Christina, but even to excite serious apprehensions at New Amsterdam at one time that it was about to become what Carthage had been to Rome, so far as the embryo city of New York was just then concerned, was the true strategic point for the erection of the fort which he had now resolved to build for the purposes which he had in view. The municipal government of the City of Amsterdam now held the legal title to the Hoorn Kill and all our bay front from Cape Henlopen to Bomby Hook Roads, and as he knew very well that the Swedes could not pretend to any title prior to theirs to that portion of the country below, he convened a general assembly of all the Indian sachems inhabiting the country from the Christina to the mouth of the river, and after learning from them that they had never sold any part of it to the Swedes, he concluded a contract with them for the purchase of it on behalf of his company, and proceeded, without delay, in the year 1651, to erect a fort on



the point I have mentioned, and to garrison it with a sufficient Dutch force to hold it against any the Swedes could then bring against it, and which he named Fort Cassimer. A few Dutch settlers soon collected about it, and it became from that date the third Christian or civilized settlement within the limits of our State. Fort Nassau had also been abandoned on the erection of Fort Cassimir, by the removal of the garrison from it to the latter post.

The West India Company of Sweden had formally protested against these proceedings of Stuyvesant, and their governor, Printz, after having repeatedly admonished them in vain of their danger from them, and of the necessity of their taking more decisive steps to recover the ground which they had lost by the erection of Fort Cassimer, had at length resigned the office, and was shortly afterwards succeeded by John Claudii Rising, under the title of director-general of New Sweden, and who became, for a brief period at least, all that his name imports in our language. Both the Dutch and the Swedes had long entertained serious and growing apprehensions of the designs of the British government upon the whole territory of both companies, under their asserted claim, from the beginning of its settlement, of a superior title to it; and Rising's official instructions, therefore, particularly admonished him to proceed in his administration of affairs in New Sweden with the utmost prudence and circumspection, and to avoid by all means any breach of friendship with either the Dutch or the English, as a breach with the former might afford the latter an opportunity to seize Fort Cassimer, and that it was better for them that it should continue in the possession of the Dutch than

fall into the hands of their more powerful and dangerous neighbors in that country. He was, however, to employ every peaceable method in his power, without resorting to any hostile act, to induce the Dutch to abandon and relinquish Fort Cassimer to them. Whether he had secret instructions of a contrary tenor does not appear, but it is, at least charitable, for his sake to presume that he had from the course which he immediately afterwards adopted. He embarked from Sweden in an armed ship, with military officers and troops and settlers on board, amounting in all to some two hundred and fifty men, and arrived in the Delaware in the latter part of May, 1654. On ascending the river and approaching Fort Cassimer the ship was prepared for action, and rounding to opposite the fort, fired a salute and signalled to it to send an officer on board, which was soon done by the commandant of the fort, and upon his arrival on board Rising informed him who he was, and at once demanded the surrender of it as on Swedish ground, and with it the surrender of the river also, as a part of their possessions. The officer from the fort and his boat's crew having been delayed in reaching it on their return, and receiving no answer to his demand in the mean time, the next morning he landed a military force from the ship, and as much by surprise as by force stormed and seized it without resistance at the point of the sword and the bayonet. He did not propose to take any prisoners of war, as none had been declared, or any intimation given of his hostile intention previous to the demand made for the surrender of it, and he therefore, after suddenly overpowering and disarming the Dutch garrison, chased them out of the fort at the

point of the bayonet, and took possession of it, and garrisoned it with his own forces. He also proceeded soon afterwards to improve, enlarge, and strengthen it, and to change the name of it and of the small settlement which had formed about it to Fort New Amstel. And as a fit conclusion to this brilliant achievement by way of surprise, he immediately communicated by letter to Governor Stuyvesant the first intimation he had of it, informing him of what he had done, but intimating that he could have no further correspondence with him on the subject, and that any discussion or negotiation in regard to the matter must be referred to their respective sovereigns. For my own part, I do not think that Stuyvesant ever thought of replying to that letter by means of paper, pen, and ink, but, on the contrary, that his only thought from that moment was how to get even with him in the way of mutual surprises in that line of business, so that Rising should have nothing to boast of on that account when it should be finally settled between them. In a few days after the capture of Fort Cassimer, Rising took up his permanent abode in Fort Christina, and made it not only his headquarters, but the seat of his government as director-general of New Sweden.

The indignation produced in Holland by this bold and hostile invasion of their possessions here was intense and general, and the immediate effect of it was to reduce the long pending controversy between the two companies and the two races in this country to the usual and last resort in such cases, the arbitrament of arms. Stuyvesant was promptly ordered by the company to prepare to recover Fort Cassimer and to reduce the Swedes to entire obedience

to their authority and government with whatever force might be necessary for the purpose, and with as much despatch as practicable. Meanwhile corresponding preparations were made for the emergency by the company in Holland, and even recruiting stations were opened and drums were beaten for recruits for days in the City of Amsterdam for the great war that had at last broken out between the Dutch and the Swedes in America. All Dutchmen were excited everywhere. Delaware was at stake, and nothing short of the speedy and complete subjugation and conquest of New Sweden would now satisfy the universal expectation. But the coolest man among them all perhaps, on either side of the ocean, was Governor Stuyvesant. He had neither forgotten that surprising march which had been stolen upon him by the dashing hero of New Sweden, nor that short and surprising letter, in which he had condescended to apprise him of it. Stuyvesant was an old soldier by profession, and had learnt the art of war in a subordinate station in the Low Countries, and had served with some distinction and lost a leg in battle in other regions on this side of the Atlantic, and who now begun in his heart to realize and cherish some of

"That stern joy which warriors feel  
In foemen worthy of their steel,"

in anticipation of the pleasure and the opportunity which he would soon have of surprising Rising in turn by stealing a similar march on him. He accordingly set to work with as much secrecy as coolness and calculation to make all his preparations for a combined military and naval ex-

pedition of entirely unnecessary proportions against New Sweden, his only points of attack being Fort New Amstel, late Fort Cassimer, and Fort Christina, neither of which contained a garrison of more than thirty or forty men, and with a military force at his command quite equal in numbers to the entire population of the Swedish settlements on the Delaware, women and children included. And yet, he conducted all his preparations for the occasion with so much patience, prudence, and circumspection through a period of nearly one year, that Rising received no intimation of them at Fort Christina, except by admonition from friendly Indians towards the last, who, it seems, had learnt more of what was going on in New Amsterdam than he had; and who, even then, seemed never to have apprehended or imagined that the object of such an expedition on Stuyvesant's part was anything more than the recovery of Fort Cassimer and the country below the Christina.

The Dutch West India Company had promised Stuyvesant from the first assistance in vessels, munitions, and soldiers from Holland, and had directed him to impress into his service, at their expense, any vessels in the New Netherlands that the occasion might require, and had already sent over to New Amsterdam one man-of-war and two other ships, with men and munitions, whilst Stuyvesant, by hiring and impressment, had added four others to the number, and among them a French privateer, captain and crew, which had been hovering on the coast in pursuit of prey on the commerce of any nation the King of France was then at war with, and had just come into New Amsterdam for water and stores. And with this formidable Dutch

armada, as it may well be called, considering the era, locality, and destination of it, consisting of seven sail, and containing from six to seven hundred men in all, he sailed for the capes of the Delaware on the 5th day of September, 1655, which he entered the next morning, with his flotilla well in line, but spent several days in the lower part of the river in marshalling and arranging his military forces preparatory to landing them in sections, with their proper officers and colors, at their place of destination. Rising was now at Christina, but had learnt enough from the sources which I have mentioned a short time before this, to do the best he could to prepare Fort New Amstel for the impending crisis, and to order the commandant not to allow the fleet to pass it, if he could prevent it, or without firing upon it. Both orders, however, he flatly disobeyed, for, after getting under way again, the fleet ascended the river, and the whole of it passed the fort without any effort on his part to arrest or prevent it, and came to anchor above it, out of reach of its guns. And now ensued a display of military genius, skill, and science on the part of Stuyvesant, considering the overwhelming superiority of the force, land and naval, under his command, which must have amused Irving very much in his young days of authorship, and tempted him, in his burlesque history of New York and Delaware at that early period, to present the gallant hero and Dutch conqueror of New Sweden in such a ludicrous and comical aspect in the fictitious pages of the simple and venerable Dutch historian, Diedrich Knickerbocker, as to give great offence to his descendants in New York at the time of its publication. For it would really seem from the excessive

amplitude of his preparations for it, and from the slow and exceedingly cautious manner in which he proceeded to take both Fort New Amstel and Fort Christina, weak and feeble as they were, that he was actuated all the time by the supreme and humane desire and intention of achieving the conquest without anybody's being possibly hurt on either side. And such was in fact the result. He at once summoned the fort to surrender, but the commandant not complying with his demand, he landed all his troops out of reach of cannon-shot, and then proceeded to invest it by posting a detachment about five miles off to watch Fort Christina, and another somewhat nearer to cut off any reinforcement or relief from that quarter, and then by digging trenches and throwing up embankments, and by what, I believe, is termed in the military art gradual approaches, to get the residue of his forces near enough to the works, under entirely safe cover, to open his guns upon its log battlements. He had in the mean while repeated his demand for its surrender, and at last peremptorily, with a solemn threat of opening his guns upon it forthwith in case of refusal, when the commandant, to save any further useless waste of time, concluded to surrender, and accordingly capitulated on the very favorable terms offered, without any one being hurt, even by accident, on either side; and New Sweden was half conquered already. He next proceeded in like manner against Fort Christina, ordering his armed ship and the French privateer round into the Christina and into such a position as to rake the fort with their guns, and then spent twelve days in investing it and in erecting half a dozen different batteries on the several commanding posi-

tions surrounding it, mounting in the aggregate not less than twenty cannons, independent of the guns of his two armed ships, when, on his final and peremptory summons, it followed the example of Fort New Amstel, and surrendered with precisely the same result,—nobody hurt and no powder burnt, which fortunately, perhaps, for all concerned, happened to be a very scarce article in Fort Christina just at that time. The capitulation was also on equally liberal and favorable terms. Stuyvesant even treated Rising in particular, quite generously and handsomely, for the exchequer, both public and private, of the latter being now in quite a collapsed condition, he loaned him money enough to pay his expenses back to Sweden. The summary effect of this last surrender was to efface New Sweden forever from the map of our country. The date of it was the 25th of September, 1655. From the best information which we have on the subject, I do not think the whole population of the Swedish settlements on the Delaware, men, women, and children included, amounted to more than three hundred and seventy-five souls at that time.

One of the results of this conquest was to increase the previous indebtedness of the Dutch West India Company to the City of Amsterdam to so large an amount as to induce them, together with other considerations, to apply to the city government to accept and assume the proprietorship and dominion of all their possessions on the Delaware below the Christina in satisfaction of the debt, which was assented to, and soon after the same were duly relinquished and conveyed to the city; after which they were called the possessions of the colony of the City of Amsterdam, or the



City Colony, the company still retaining, as before, all north of the Christina, including the fort and settlement about it bearing that name. The authorities of the City of Amsterdam seem at once to have conceived the idea of building up a settlement and a port on the South River that should equal and rival New Amsterdam on the North River, and to have selected New Amstel for that purpose; and so zealously did they embark in the enterprise, and liberally and generously promote and stimulate the growth of it, that it contained more than one hundred houses, a population of five or six hundred inhabitants, and some twenty to thirty farms around it, by the year 1659; and it was probably this unexampled growth and prosperity of New Amstel that first attracted the special attention of Lord Baltimore and his official representatives in the Province of Maryland, so soon after their domestic commotions and conflicts had been sufficiently composed and settled in the centre of the province, to admit of their turning their attention to his interest in any other direction, and which, as we have before seen, was not until the year 1658. New Amstel had now become the seat of government of all the possessions belonging to the City of Amsterdam, or the City Colony, and had a director-general and council residing in it, who had jurisdiction over all of its possessions, the former being appointed by the authorities of the city; and, furthermore, it was not until the year 1659 that it first became known to any settler within our limits that Lord Baltimore had any claim or pretension whatever to any territory on the Delaware. That information was first communicated by a member of the provincial council residing on the Eastern Shore,

to the director-general of the City Colony at New Amstel, by a messenger sent by the latter to him with a letter addressed to the governor of the province, and a request that he would forward it to the governor, and which contained a respectful application for the surrender of five or six soldiers who had recently deserted from the fort at New Amstel and fled into the province, and which he politely received and promised to forward as requested; but he, at the same time, took occasion to instruct the messenger to inform the gentleman who had sent him, that he then had in his possession a commission from Lord Baltimore to go to New Amstel and demand the possession of it in his name as rightfully belonging to him, because he believed that it was within the limits of his Province of Maryland, but that his lordship had since arrived in the province, and had ordered that all the lands between the degrees of his grant should be surveyed, and as soon as ascertained, that they should be reduced to his authority and jurisdiction without fail and without relinquishing any part of them. The communication was verbal merely, but it was duly delivered by the messenger on his return to the director-general, and as soon as it became known, which was instantly, of course, the universal surprise and astonishment which it at once produced was simply stunning on all New Amstel; and from the account we have of the sudden panic into which they were thrown by it, some of the weak-kneed inhabitants of the place would, if they could, have instantly fled from it in the opposite direction, so completely were they appalled and paralyzed by it. This occurred in the month of June, 1659.

In the month of August of the same year, at a meeting of the governor and provincial council held for the purpose of taking into consideration his lordship's instructions and commands to send to the Dutch, in Delaware Bay (I quote from the minutes of the council) seated within his lordship's province, to command them to be gone, "it is ordered that Colonel Nathaniel Utie do make his repair to the pretended governor of a people seated in Dealware Bay within his Lordship's province, and that he do give them to understand that they are seated within his Lordship's province without notice given to his Lordship's lieutenant here, and require them to depart the province." This was followed in a distinct paragraph by an additional instruction of a private nature, and which was evidently intended for the eye of the commissioner only, but which the gallant Colonel, the Harry Hotspur of his lordship's cavaliers and provincial council, either forgot, or did not deem it necessary, to detach from his commission and the preceding instructions embodied in it, when he came to lay his credentials before the pretended governor and council of New Amstel, assembled in due form and in grave and solemn state to receive him as the accredited envoy, not of his Majesty, the King of Great Britain, but of a grand dignitary second only to him, I have no doubt, in his estimation, his noble lordship of the Province of Maryland. It was literally as follows: That in case he finds an opportunity, he insinuate into the people there seated, that in case they make their application to his lordship's governor here, they shall find good conditions according to the conditions of plantation granted to all comers into

this province, which shall be made good to them, and that they shall have protection in their lives, liberty, and estates which they shall bring with them. And which clearly indicates that they were not so anxious for them to be gone, after all. But if they expected this delicate and sinister part of the embassy to be accomplished by gentle hints, or diplomatic address, finesse, or insinuation merely, they were very much mistaken in their man when they appointed such a person as the straightforward, plain-speaking, gallant Colonel Utie to execute it. A communication, however, of a more polite and courteous tenor had been about the same time addressed in terms to the commander of the people on Delaware Bay in reply to the letter I have before mentioned from the director-general at New Amstel, to the following effect:

SIR,—I received a letter from you addressed to me as Lord Baltimore's Governor and Lieutenant of the Province of Maryland, wherein you suppose yourself to be the governor of a people seated in a part of Delaware Bay, which I am very well informed lieth to the southward of the degree of forty, and can therefore by no means own or acknowledge any for governor there but myself, who am by his Lordship appointed lieutenant of the whole province lying between these degrees, 38 and 40, but do by these presents require and command you to presently depart north of his Lordship's province, or otherwise desire you to hold me excused if I use my utmost endeavor to reduce that part of his Lordship's province unto its due obedience under him.

Three days after the session of the council and his appointment, Colonel Utie, with two other delegates and a servant, mounted on horses, made their imposing entrance into New Amstel, but, as if to assure the inhabitants at first sight of the friendly purpose of his mission and his desire to propitiate their good will by a graceful tender of the olive branch or calumet of peace, concord, and amity, he brought with him in custody, not the five or six soldiers who had deserted from the fort, but three or four unfortunate debtors to the City Colony, who had adscended from New Amstel into the province to escape imprisonment for the crime of getting in debt without the ability to get out of it, and duly surrendered them to the proper authorities. In return for this civility and chivalric act of colonial comity, he demanded an audience of the director-general and council at the earliest practicable moment, for his business was urgent and would not admit of delay, which was promptly granted; and on the introduction of the business of his mission, he opened the proceeding by laying his commission and instructions in full before them, which relieved their apprehensions very considerably, particularly the private portion of them; but in the course of the discussion, which was conducted in very good temper on their part, he soon lapsed into a vehement and violent harangue, in which he added a good deal to the imperative force and emphasis of his public instructions, and concluded in effect by demanding an immediate compliance with them, and with a threat of instant war as the only alternative left them. They replied that it would be necessary for them to consult Governor Stuyvesant before answering his demand, and that it would require several

weeks for that purpose, whereupon their meeting was adjourned for three weeks; and yet the colonel, notwithstanding his haste for an answer and to return to the province as speedily as possible on his arrival, remained a minister resident for the whole of that time in New Amstel, and did faithful service in the mean while among its landholders by insinuating in a very free and open manner how much better it would be for all of them to repudiate the claim of the Dutch and accept Lord Baltimore's conditions; and there were not a few fence-men in the place and vicinity who were half inclined to agree with him on that question, and were always willing to hear him discourse, either in public or private, on that interesting subject. This gave much uneasiness as well as offence to the constituted authorities of the town, but no one was so much outraged by it as Stuyvesant was when he learned it, for he did not hesitate to denounce him as a spy, and to threaten to have him arrested as such and sent a prisoner to Holland. The name of Fort Christina and the settlement around it had prior to his time been changed to Altona, and meeting with the director-general of that post and settlement on the streets of New Amstel during the time I have just spoken of, the colonel notified him that Lord Baltimore claimed Altona also as within his province, and told him that he must consider what he had said to him there as sufficient notice of that fact. On the day appointed, however, the director-general and council, with the consent of Stuyvesant, again met the colonel, when they respectfully informed him that they rejected the claim and refused to accede to the demands of Lord Baltimore, and then delivered to him

a formal protest against his claims and pretensions on behalf of the New Netherlands.

Steps were immediately taken in the next place to prepare to defend their possessions on the Delaware against the demands and menaces made in the name of his lordship, and pursuant to instructions given by the City of Amsterdam, all of the country lying west of their previous purchase, from Cape Henlopen to the mouth of the river, was bought of the Indians, and a new fort was erected and garrisoned at the Hoorn Kill. A considerable body of troops were also ordered from New Amsterdam, and stationed at New Amstel. But whilst these preparations were in progress, Stuyvesant concluded to despatch an embassy to his excellency his lordship's governor of the Province of Maryland, with full powers to demand instant and ample reparation for the audacious and insolent manner in which his demand for the surrender of their possessions had been made on behalf of Lord Baltimore, and for the great loss and injury which had been entailed on the prosperity of New Amstel by the consternation which it had produced there, and for the sinister and insidious efforts which had been made there to frighten and seduce the inhabitants from their fidelity to their true and lawful government, and also to compose, compromise, and settle all matters in dispute and controversy on such terms as should be mutually acceptable to the parties interested; and which constituted in fact the main if not the only object of the mission. The commission consisted of two very intelligent and respectable gentlemen of New Amsterdam, Mr. Augustus Herman, a native of Bohemia, and the original proprietor of the

manor of that name, containing eighteen thousand acres originally, and lying partly within the limits of this State and partly within those of Maryland, and Mr. Resolved Waldron, who, after reaching New Amstel, proceeded on their journey with Indian guides and a small escort of soldiers, threading their way for the most part through primeval forests, arrayed in all the rich autumnal tints of the month of October, until they reached a small affluent of the Chesapeake, and thence by canoe navigation past the residence of the redoubtable Colonel Utie, on an island at the mouth of the Sassafras River, of whom they had heard such terrible things at New Amstel that they did not deem it prudent to wait on him, for fear of his arresting their farther progress to Kent Island, where after several days of land and water travel, they procured a fine sail-boat, and proceeded on their voyage down the Chesapeake. They were received very courteously, and had several protracted and interesting interviews and official sessions with Governor Fendall, Secretary Calvert, and the provincial council, during which the conflicting claims of the Dutch and of Lord Baltimore to the territory in dispute were ably canvassed and discussed by their respective representatives; and among other matters urged by the Dutch commissioners against the pretension of his lordship, the misrepresentation contained in the petition on which his grant had been made, and the fact that the Dutch had planted colonies and settlements within its limits, and had sealed their title to the territory with their blood—alluding to the massacre of their colony on the Hoorn Kill—prior to the date of it, were distinctly presented and pressed during the discussions.



But the most remarkable thing perhaps developed in the course of them was the final proposition submitted by the Dutch commissioners. Finding there was no other prospect of accommodating their differences, they at length proposed to divide the peninsula by a conventional line running north and south through the middle of it, even designating on the map prominent points in the location of it, and so near to where our present coterminous boundary is established, as to leave no doubt that early proposition in 1659 became the original of the idea and conception of the conventional division afterwards propounded to the succeeding Lord Baltimore by William Penn. This proposition was rejected, however, and the deliberations closed, and their mission terminated without any practical results. No further negotiations were instituted between them on the subject, nor were any further demands made by either upon the other afterwards; before the close of the year, however, the governor of the province ordered a survey to be made of lands within six or eight miles of New Amstel, and allotted and granted them to inhabitants of the province; but none of them ever attempted to take possession of them, and the effort would have been wholly abortive if they had, because the Dutch were on the alert for it, and had instructions from Stuyvesant to repel it by force of arms, if necessary, as an unlawful invasion of their possessions.

In the following year Lord Baltimore made his next effort to acquire by purchase the lands claimed by him through his agent in the City of Amsterdam, and by a direct application to the Dutch West India Company to surrender to

him the settlements of Altona and New Amstel and their respective neighborhoods, upon condition of his reimbursing the company all expenses incurred on account of them, which offer the company not only peremptorily refused, but took occasion in their reply to his communication, which asserted his claim to them under his patent and as within the degrees of his grant, to affirm their right and title to them by possession under the grant of the State-General for many years without claim or molestation from him or any other person, and to admonish him that they were resolved to retain and defend them to the utmost extremity, in case he persisted in his pretension and should resort to forcible means to obtain possession of them. They also soon afterwards appealed to the State-General to represent through their minister at London to the ministry of England the situation of their affairs with Lord Baltimore in relation to the matter, and to request that the British sovereign would require his lordship to desist from any encroachment upon them until a boundary could be established between his Province of Maryland and their possessions on the South River, and which was in due time attended to by the State-General as requested; and that it was also duly brought to the attention of the British sovereign is, I think, to be reasonably inferred from the fact that at a session of the governor and council of the province held eight months afterwards, in May, 1661, they adopted a resolution to the following effect: that inasmuch as it was doubtful whether the settlement of New Amstel was below the fortieth degree of north latitude, and the Dutch West India Company was determined to maintain their possessions on the Delaware

by force, and there was no hope of any aid from the other English colonies in the attempt, no further efforts should be made to reduce them to obedience to the authority and jurisdiction of the province, until the will of his lordship should be known in regard to the matter; and that some effort should be made in the mean while to ascertain whether it was within the boundaries of his grant.

As to the events which occurred between the date last mentioned and the month of August, 1662, which we have on the authority of some of the historians of our sister State, such as the advance of an organized military force under the banners of Lord Baltimore against the fort and settlement at the Hoorn Kill during that time, the evacuation of the fort and the retirement of the Dutch settlers from the place, and the occupation of it by Maryland settlers, and the collections of duties there by his authority, I can only say that while I think it very questionable, or their statements much exaggerated, it is quite certain that if the Dutch settlers ever retired from it, or the fort was ever evacuated, they must have returned very soon afterwards, and that if the Maryland settlers ever possessed themselves of it, they must have abandoned it quite as speedily, as the well-authenticated historical events which followed soon after will conclusively show. By them all this is recorded as having occurred in the year 1661; and yet this date brings us down to an era of good feeling pre-eminently characterized by friendly and harmonious relations between the Dutch and English settlers on the opposite sides of the peninsula, and also between Lord Baltimore himself and the principal officers in all the Dutch settlements; for in August, 1662,

his lordship with a numerous suite made a friendly visit to the director-general of the City Colony at New Amstel, and was very cordially received and entertained by him, and two days afterwards extended his visit to the director-general at Altona, where he was received and entertained in the same friendly manner, and where there was an invitation from Governor Stuyvesant awaiting his arrival, to extend his visit as far as New Amsterdam, with a tender of a proper escort from Altona, but which his engagements compelled him with regret to defer to another and more convenient opportunity. I shall have occasion hereafter to mention another important fact which would seem to be equally incompatible with the statements which I have referred to, or with the presumption even, that any such hostilities had occurred between them in 1661, or that his lordship was in possession of the fort and settlement at the Hoorn Kill in that year, or any year afterwards.

On the 12th day of March, 1664 (O. S.), letters patent were issued by Charles the Second of England to his brother, James, Duke of York and Albany, his heirs and assigns, for all the mainland beginning and extending from the River St. Croix, now the northern boundary of the United States, where they adjoin the British province of New Brunswick, to the east side of Delaware Bay; and among the rights, powers, and privileges conferred upon him by it were those of royal governor of it, subject to the sovereignty of the king over it. Prior to that date it having been the purpose of Charles the Second for a long time to terminate the disputes and contentions between the Dutch and English settlers in America by estab-

lishing in the only practical method left to him, the long-asserted claim of the Crown of England to all the territory then in possession of the Dutch in this country, he despatched in the latter part of the month of May following a fleet, consisting of two frigates, a sloop-of-war, and a transport with three hundred troops, under the command of Colonel Richard Nichols, with whom were associated as royal commissioners Sir Robert Carr, George Cartwright, and Samuel Maverick, Esquires, with powers and instructions to visit the English colonies on the coast, and hear complaints and settle the peace and security of the same, and that their first duty would be the reduction of the Dutch in or near Long Island, or anywhere within the English dominions, to entire obedience to the sovereignty of the British Crown, to remedy the many grievances which the neighboring British colonists had for many years suffered at their hands. In the mean time, before the expedition had reached its destination, on the 25th day of June, 1664, the Duke of York sold and conveyed to Lord Berkeley and Sir George Carteret that portion of the lands granted to him lying between the Hudson River and the Delaware Bay, and now constituting the State of New Jersey; and which was then named New Jersey in compliment to Sir George Carteret, who had been governor of the island of Jersey, and had firmly held it for Charles the First during the rebellion and his war and conflict with Parliamentary forces, and whose devotion to his cause was in part the consideration for the sale to them.

It is not necessary to trace in detail the progress and movements of the English fleet and expedition in the work

assigned them. It is sufficient to state that by the 9th of September following the fleet had appeared before New Amsterdam, the capital and principal settlement of the New Netherlands, and Governor Stuyvesant had submitted to the demands of Colonel Nichols without forcible resistance or firing a gun, and had surrendered to the English all of the Dutch possessions over which he had authority and command at that time, and England was now in full possession and control of them. A short time prior to this event, however, the residue of all the Dutch and formerly Swedish settlements on the western side of the Delaware, above the Christina, including Altona, had also been sold and conveyed by the Dutch West India Company to the City of Amsterdam, and had been incorporated in the City Colony, and was now solely subject to its government and authority. That fact had been made known to Colonel Nichols and the commissioners, either before or upon the surrender of Stuyvesant, and as their instructions were to reduce all the Dutch possessions on our coast to obedience, their next duty was to proceed in like manner against their settlements on our river. They had left England with ample instructions for every contingency that might arise, and for this occasion most especially. Accordingly, Sir Robert Carr was directed by Colonel Nichols and the other commissioners to proceed with one of the frigates, the sloop-of-war, and transport of the fleet, and the troops not required to hold the fort and community at New Amsterdam in proper subjection, against the fort and the town of New Amstel, on the Delaware, as then the principal settlement upon it; and for that purpose a commission was duly issued

to him by them with written instructions, among which was the following, and which was evidently dictated at the War Office in London, by the command of the king, before the departure of the expedition from England: "If Sir Robert finds he cannot reduce the place by force, nor upon the conditions before mentioned, he may add such as he may deem necessary; but if both fail, he is, by a messenger to the Governor of Maryland, to ask aid, and from all other English who live near the Dutch plantations. He is to declare to Lord Baltimore's son and all the English concerned in Maryland, that this great expense to His Majesty in ships and soldiers has been incurred solely for the purpose of reducing foreigners in these parts to His Majesty's obedience; but that being reduced at His Majesty's expense, he is commanded to hold possession for His Majesty's own behoof and right, and that he is willing to unite with the Governor of Maryland in His Majesty's interest on all occasions; and if my Lord Baltimore doth pretend right thereto by his patent (which is a doubtful case), you are to say that you only keep possession till His Majesty is informed and otherwise satisfied."

Fortunately, Sir Robert had no occasion to call on the Governor of Maryland for any assistance on his arrival before New Amstel. But suppose it had been otherwise, with such a wet blanket as that instruction and admonition to his lordship contained thrown on the shoulders of every cavalier and soldier of Maryland called on to aid in such an exigency and such a struggle, with how much ardor or spirit would they have engaged in it? Under the instructions referred to, Sir Robert Carr sailed with his fleet

and troops for the Delaware, and, after a tedious voyage in ascending the river, passed the fort at New Amstel without being fired upon, and anchored above it. He then made a formal demand in the name of his Majesty, the King of England for the surrender of the fort, the town, and all the possessions of the City Colony on the bay and river. After one day of parley and delay, the authorities and citizens of the town were generally disposed to submit and to surrender the place without further hesitation, but a minority of them, at the head of whom firmly stood the director-general of the colony, D'Hinoyossa, were strenuously opposed to it, and would come to no terms, and as Sir Robert was in hopes that they also would at length see the necessity and propriety of it, the effort to procure it without firing either upon the fort or the town was protracted for three days, when the town authorities and citizens determined to capitulate and surrender it without the consent and against the will of the director-general, on which he retired with his officers into the fort, resolved to hold it, at least, to the last extremity. The next morning the frigate and sloop-of-war were ordered to drop down below the fort, but within musket-range of it, and each to discharge two broadsides into it, and the troops were also landed for the purpose of storming it as soon as those discharges were made. The plan of attack was promptly executed by both the ships and the soldiers, and in a moment the fort was theirs, with a loss to the Dutch of four killed and ten wounded out of a garrison of between thirty and forty men. It was an act of consummate courage and heroic resolution on the part of the director-general to withstand such an attack, but it was



at the same time but little better than an act of madness, for the fort was utterly untenable, and could afford no security or protection against such a combined assault both by land and water. The terms of capitulation, though liberal to all the inhabitants submitting to them, constituted a total surrender of the Dutch possessions on the Delaware to the sovereignty of the British Crown. Officers and troops were immediately despatched to the Hoorn Kill to enforce the surrender and take possession of the fort and settlement there; and there were strong complaints on the part of the inhabitants both there and at New Amstel of the bad treatment and spoliations of private property to which they were subjected by the British troops after the surrender. The name of New Amsterdam was now changed to New York, and of New Amstel to New Castle, by the English conquerors; the former of which contained at that time a population of about fifteen hundred, while all the settlements within the limits of our State did not probably comprise a population of more than two thousand. The failure of the two preceding races to make any greater progress in the settlement and population of this fine and favored region in America during the time they had been in the possession of it, is only the more remarkable when we reflect that each embarked in the grand enterprise with great spirit and ardor at an unusually brilliant and auspicious epoch in the history of both countries apparently for such an undertaking, and when the star of empire shone in the ascendent with the brightest effulgence over each of them, whilst the sky of Sweden was yet radiant with the lustre of the achievements and conquests of Gustavus Adolphus in

Russia, Prussia, and on the shores of the Baltic, and that of the Netherlands was still in a blaze with the glory of the still grander achievement of their entire independence of the Crown of Spain, and the magnificent conquests of their meteor flag both in Oriental and in Western seas; and yet, strange to say, not even the faintest and feeblest reflection of that splendor and glory on either hand ever reached to their dominions on the shores of the Hudson or the Delaware. Full fifty years had now elapsed since the Dutch had commenced the plantation of their possessions in this country, and yet in one hundred years after that time Delaware alone must have contained a civilized population of nearly fifty thousand, and the four States of New York, New Jersey, Pennsylvania, and Delaware a similar population of nearly one million; and now, after the lapse of a little more than two hundred years from that date, the population of the same cannot be far short of ten millions. It is therefore manifest that the English conquest was no calamity, but a great blessing in the first instance to the region conquered, and afterwards to our whole country. For it was the fortune of these four States to bear the brunt of the American Revolution, as the regions of the Hudson and the Delaware became the theatre of its greatest and grandest conflicts, and here, in turn, our national independence was afterwards substantially conquered; and from that time they both became illustrious in the history of the country, and the Delaware particularly memorable as the historic river of the Revolution.

In the following year was formally proclaimed by England against the Netherlands, and continued until 1668,

without any change in the relations which the province of the Duke of York now sustained to England, and into which our territory, with the sanction of his Majesty Charles the Second, had been duly incorporated immediately after its conquest, by his royal highness the duke under his letters patent, which did not include it, and by which he thus constituted his whole territory one province and one provincial government under them, making New York the central seat of it, and the official residence of his lieutenant-governor for the time being. But war again occurred between the two countries in 1672, during which the Netherlands temporarily recovered the possession of the whole region, ours as well as the residue of it, and re-established their government over it; on the conclusion of it, however, in 1674, by the terms of the treaty it was restored to England, and which had the effect at last to confirm the title of that country to it by the peaceful and solemn compact of the two countries; and inasmuch as the intervening recapture of it *flagrante bello* was supposed to have had the effect in law to abrogate and annul the estate and powers granted and delegated immediately from the king to the Duke of York in the province, it was deemed advisable to revive and confirm the grant by a renewal of the letters patent after the close of the war and the ratification of the treaty of peace restoring it to the Crown of Great Britain, and which was accordingly done on the 29th day of June, 1674.

On the 14th day of June, 1680, William Penn presented to his Majesty Charles the Second, with whom he was personally well acquainted, as he was also with his brother,

the Duke of York, a petition to grant to him in lieu of a claim on the British government, which he had inherited from his father (late an admiral in the British navy), for money advanced and service rendered, to the amount of sixteen thousand pounds, a tract of country in America, lying north of Maryland, bounded on the east by the Delaware River, on the west limited as Maryland, and to extend northward as far as plantable. There then existed in the privy council of the king a body of councillors of the Crown well known to the laws and constitution of the realm, a duly constituted committee, named in polite and strictly technical terms The Lords of the Committee of His Majesty's most honorably Privy Council for the Affairs of Trade and Plantation, of which Lord Chief Justice North of the Court of King's Bench was *ex officio* a member, among many other eminent noblemen and gentlemen. This committee had, among other powers conferred upon it, special cognizance of disputes in relation to plantations and colonial and provincial boundaries arising in the distant colonial possessions of the Crown, and beyond the jurisdiction of the courts of law of the kingdom, notwithstanding they might involve questions of right and title to extensive possessions in such distant colonies; and whenever a question arose between two provinces of America, or elsewhere in their remote possessions, concerning the extent of their charters, mutual limits, or matters of that kind, the jurisdiction of the committee was original. It had, however, no power to enter judgment or decree as a court of law or equity, or to enforce its decision against either party, for its province simply was to investigate such cases and to advise

the king of their conclusions in regard to them. To that committee, by the direction of the king, Mr. Penn's petition was promptly referred. I am here happy to have the opportunity to acknowledge the obligation we owe to the distinguished commissioners appointed a few sessions since on behalf of this State to consider, in conjunction with a like body of commissioners appointed on behalf of the State of New Jersey, what was then known as the fishery question between the two States, and to report to the Legislature thereon, for the thorough and patient research and investigation made by them in the matter, and which brought to our knowledge, for the first time in the history of the questions we now have under consideration, the full and interesting details of the proceedings before that distinguished committee of the privy council on the petition so referred to it. I shall repeat the substance of them only.

On the 14th of June, 1680, the Committee in session in the council chamber, the petition of William Penn was read, praying in consideration of debts due to him, or his father, from the Crown, to grant him letters patent for a tract of land in America, north of Maryland, bounded on the east by the Delaware River, on the west limited as Maryland, and northward to extend as far as plantable; whereupon Mr. Penn was called in, and having been asked what extent he would be contented with northerly, declared he would be satisfied with three degrees to the northward, and was willing, in lieu of such a grant, to remit his debt due to him from His Majesty, or some part of it, and to stay for the remainder until His Majesty should be in a better condition to satisfy it. And after consideration of the whole

matter it was ordered that copies of his petition be sent to Sir John Werden on behalf of His Royal Highness (the counsel and representative of the Duke of York), and to the agents of Lord Baltimore, to the end that they might report to the Committee how far the pretensions of Mr. Penn might consist with the boundaries of Maryland, or the Duke's property of New York, and his possessions in those parts. Whitehall, June 25, 1680. Committee again in session. The petition of Mr. Penn was again read concerning a tract of land to be granted to him in America, together with a letter from Sir John Werden, and another from Lord Baltimore's agents touching the same. And Mr. Penn having been afterwards called in, was told that it appearing by Sir John Werden's letter that part of the territory desired by him was already possessed by the Duke of York, he should apply himself to His Royal Highness for adjusting their respective pretensions; and Mr. Penn being also acquainted with the matter of the letter from Lord Baltimore's agents, he does agree that Susquehanna Fort shall be the bounds of Lord Baltimore's province; and as to the furnishing of arms and ammunition to the Indians, Mr. Penn declares himself ready to submit to any restraint their Lordships shall propose. Whitehall, Nov. 4, 1680. Committee again in session. The petition of Mr. Penn was read, desiring that a day might be appointed for preparing a grant unto him of proprietary in a tract of land in America upon Delaware River; and their Lordships appoint this business for Thursday next. Whitehall, Thursday, Nov. 11, 1680. Committee again in session. Mr. Attorney-General presents the Committee with his

observations on the draft of Mr. Penn's patent. Whitehall, Dec. 16, 1680. Committee again in session. Mr. Penn is called in concerning the patent desired by him, and upon reading the letters from Sir John Werden touching the boundaries wherein His Royal Highness may be concerned, their Lordships think it best for the settlement thereof that Sir John Werden be desired to attend on Saturday next in the afternoon, at which time the agent of Lord Baltimore is likewise ordered to give his attendance as to what concerns his Lordship's property of Maryland. Whitehall, Saturday, Jan. 15, 1681. Committee again in session. The boundaries of Mr. Penn's patent, settled by Lord Chief Justice North with the alterations of Sir John Werden, were read and approved, and their Lordships appoint Wednesday next, at nine in the morning, to review the whole patent. Whitehall, Saturday, Jan. 22, 1681. Committee again in session. Upon reading the draft of a patent for Mr. Penn concerning his absolute proprietary of a tract of land in America, northerly of Maryland, the Lords of the Committee desire my Lord Chief Justice North to take said patent into his consideration, and to provide by fit clauses therein that all acts of sovereignty as to peace and war be reserved to the King; and that all acts of Parliament concerning trade and navigation and His Majesty's customs be duly observed; and in general that the patent be so drawn that it may consist with the King's interest and service, and give sufficient encouragement to planters to settle under it. A paper being also read, wherein my Lord Bishop of London desires that Mr. Penn be obliged by his patent to admit

a chaplain of his Lordship's appointment, upon the request of any number of planters; the same is also referred to my Lord Chief Justice North. Whitehall, Thursday, Feb. 24, 1681. Committee again in session. A draft of a patent for Mr. Penn is read, and there being a blank left for the name of the tract or province, their Lordships agree to leave the nomination of it to the King.

The communications by letter which in the mean while ensued between the committee through its secretary, William Blathwaite, Esq., and the representative of the Duke of York, and the agents of Lord Baltimore, in relation to the matter, will furnish further information on the subject which the journal of its sessions merely, of course, could not supply, and will clearly explain and show how and why the northern boundary of our State is in the form of an arc of a circle, and which was originally fixed, pending these proceedings, by agreement between the Duke of York and William Penn, as his southern limit of his Province of Pennsylvania, where it was to abut upon the northern boundary of what his royal highness then called his Delaware, or New Castle colony. The first is a letter in reply to his service of a copy of the petition of Mr. Penn pursuant to the order of the committee at its first session, from Sir John Werden on behalf of the Duke of York.

ST. JAMES, June 23, 1680.

FOR WILLIAM BLAYTHWAITE, ESQ., *Secretary of the Right Honorable the Lords Commissioners for Trade and Plantations at Whitehall.*

SIR,—I had answered your letter of the 14th sooner, but



my going to Windsor just when I received it hindered me then, and also made me think it proper to acquaint the Duke with the contents of it first. What I have now to say is, that by all which I can observe of the boundaries mentioned in Mr. Penn's petition, they agree well enough with that colony or plantation which hath been hitherto (ever since the conquest of New York by Colonel Nichols) held as an appendix and part of the government of New York by name of Delaware Colony, or more particularly New Castle Colony, that being the name of a principal place in it; the whole being promiscuously planted by Swedes, Finlanders, Dutch and English, all which hath been actually under the government of His Royal Highness' Lieutenant at New York hitherto; but what are its proper boundaries (those of Latitude and Longitude being so very little known, or so ill observed, as experience tells us, in all the West Indies) I am not able to say; if this be what Mr. Penn would have, I presume the Right Honorable the Lords of the Committee for Trade and Plantations will not encourage his pretensions to it by reason of what is mentioned, which plainly show the Duke's right preferable to all others (under his majesty's good liking), though it should not prove to be strictly within the Duke's Patent; but if it be any other parcel of land unimproved in those parts, which is without all other patents, and not interfering with the possessions of His Majesty's subjects, already settled there, I humbly submit to their Lordships how far they may think convenient (under fitting restrictions and qualifications to tie up the government of such new colonies as near as may be to the laws of England) to recommend the

petitioner's request to His Majesty; thus I think I have, as far as I am able at present, fully answered your letter upon this subject; so I remain,

Sir, your most affectionate Friend and Servant,

JO. WERDEN.

On the same day he received from the agents of Lord Baltimore the following reply:

SIR,—In answer to yours in reference to Mr. Penn's petition, some things are thought proper to be offered in respect to the particular concern of my Lord Baltimore, and something in reference to the public on his Lordship's behalf. It is desired that if the grant pass unto Mr. Penn of the lands petitioned for in America, that it may be expressed to be land that shall lie north of Susquehanna Fort, also north of all lands in a direct line between the said fort and Delaware river; and also north of all lands upon a direct line westward from the said fort; for that fort is the boundary of Maryland northward. It is further desired that there may be contained general words of restriction as to any interest granted to Lord Baltimore, and saving to him all rights granted; it is also prayed that my Lord may have a sight of the grant before it pass. On the public account it is offered that some due caution be provided that no arms, powder, shot, or ammunition be sold by any that shall settle in this new plantation to the Indians or natives; for hereby a common mischief may happen unto all his Majesty's neighboring plantations.

This, with our thanks on my Lord Baltimore's behalf for your care of him, is all at present from,

Sir, your humble servants,

BARNABY DUNCU,,

RICHARD BURK.

On the 16th day of October, 1680, a second letter was received from Sir John Werden on behalf of the Duke of York, as follows:

SIR,—You heretofore wrote to me touching Mr. William Penn's petition then before the Right Honorable the Lords Commissioners for Trade and Foreign Plantations; to which I answered you as at that time I was obliged to; since then Mr. Penn hath represented to the Duke his case and circumstances, in relation to the reason he hath to expect favor from his Majesty touching that request of his, to be such as that his Royal Highness commands me to let you know, in order to your informing their Lordships of it, that he is very willing that Mr. Penn's request may meet with success; that is, that he may have a grant of the tract of land which lies on the north of New Castle Colony, part of Delaware, and on the west side of Delaware River, beginning about the latitude of 40 degrees, and extending northwards and westwards as far as his majesty pleaseth, under such regulations as their Lordships shall think fit.

Sir, your very humble servant,

JO. WERDEN.

In the mean while a draft of the proposed grant had been

prepared by Mr. Penn, and by the order of the committee had been submitted to the attorney-general, that if upon consideration of the powers therein proposed he should have any objection to it, he might report the same to them. And in obedience to their order their secretary had on the 18th day of November, 1680, addressed a letter to Sir John Werden, apprising him also of that fact, and that they had been informed that a copy of the draft had been laid in his hands, and that if he had nothing more to offer to them on the subject, they proposed to take their final resolution in relation to the patent at their next meeting, and stating the time of it; to which he replied on the 20th of that month as follows:

SIR,—At two of the clock of this day I met with your letter to me of the 18th instant, and a copy in it (which I here return to you) of some part of Mr. Penn's patent for land in America. I am to first premise to you that in cases of this nature it were most proper to have the advice of council learned in the laws for settling the boundaries of any new patent which may be liable to encroach on those of another's possession; but in regard I remember well the Duke's directions expressed in a former letter by me to you by his Royal Highness' order, dated the 16th of October, 1680, I shall frankly tell you my thoughts thereupon, viz.: That I believe the description by longitude (especially) and of latitude are very uncertain, and so also is it under what meridian the head of Delaware river lies, which I do believe hath never yet been observed by any careful artist. But it being the Duke's intention that Mr. Penn's grant be bounded

on the east side by the Delaware river, and that his south limits be twenty or thirty miles beyond New Castle (which colony of New Castle is northwards and distinct from Maryland, that being under the jurisdiction of Lord Baltimore), which extent northwards of New Castle colony, we guess, may reach as far as the beginning of the fortieth degree of latitude; therefore, if Mr. Penn's patent be so worded as to leave New Castle twenty or thirty miles beyond, free, and to be bounded on the east by Delaware river, I think this is all that needs as to the Duke, who will not concern himself how far north or west Mr. Penn's patent takes him.

I am, Sir, your most affectionate Friend and Servant,

JO. WERDEN.

Three days afterwards, that is to say, on the 23d of November, 1680, he wrote again to Secretary Blaythwaite, as follows:

SIR,—Mr. Penn having often fallen into discourse with me of his concerns in America since I wrote to you on Saturday, I have told him the substance of what I wrote, and he seems to fear that if his south limits be rightly set at twenty or thirty miles north from New Castle Town, he shall have so little of the river left as very much to prevent the hopes he hath of improving the rest within his patent; but, on the other side, he is willing that twelve English miles north of New Castle be his boundary, and believes the distance will fall under the beginning of the fortieth degree of latitude; I have already signified to you all I know of the Duke's mind herein, which is in general to

keep some convenient distance from New Castle northwards for a boundary to that colony. But I confess I do not understand why it is precisely necessary to insist on just such a number of miles, more or less, in a country of which we know so little, and when all the benefits are intended to this patentee which others enjoy; so as I submit this point to their Lordship's consideration, and do not think it material to add more at present, from

Your very affectionate Friend and Servant,

JO. WERDEN.

The agents of Lord Baltimore, as well as Sir John Werden on behalf of the Duke of York, were again duly notified to appear before the committee, on the 18th of December, 1680, to present their objections to the draft of Mr. Penn's patent, if any they had, and were desired not to fail in their attendance, as their lordships were determined to proceed at that time to a resolution in the matter. But neither of them then appeared, or made further answer.

Assuming, on the basis of this last letter, that the Duke of York had at length assented to the fixation of the southern line of Mr. Penn's patent for his Province of Pennsylvania at the distance of twelve English miles north from the town of Newcastle, the Lords of the Committee for the Affairs of Trade and Plantations requested Lord Chief Justice North to draw the description of the boundaries to be inserted in it, and which he did in the following terms:

"As the same is bounded on the east by Delaware River from the twelve miles distance northward of New Castle

Town, beginning of the fortieth degree of northern latitude unto the three and fortieth degree of northern latitude, if the said river doth extend so far northward; but if the said river shall not extend so far northward, then by the said river so far as it doth extend; and from the head of the said river the eastern bounds are to be determined by a meridian line to be drawn from the head of the said river unto the said three and fortieth degree; the said lands to extend westward five degrees in longitude, to be computed from the said eastern bounds; and the said lands are bounded on the north by the beginning of the three and fortieth degree of northern latitude, and on a circle drawn at twelve miles distance from New Castle northward and westward, unto the south by the beginning of the fortieth degree of northern latitude; another by a straight line westward to the limit of longitude above mentioned, excepting all lands within twelve miles of the town of New Castle that shall happen to lie within the said bounds, now in the possession of His Royal Highness, or his tenants or assigns."

Their final report to the king in the matter was as follows:

MAY IT PLEASE YOUR MAJESTY:

In obedience to your Majesty's order, signified to us by the Earl of Sunderland on the 1st of June last, we had prepared the draft of a charter constituting William Penn, Esq., absolutely proprietary of a tract of land in America therein mentioned, which we humbly present to your Majesty for your royal approbation, leaving also the naming of the

said province to your Majesty, which is most humbly submitted.

In response to their inquiry of the attorney-general, they received the following communication from the first law officer of the Crown during their consideration of the matter:

MAY IT PLEASE YOUR LORDSHIPS:

I have considered the petition of Mr. William Penn, praying his majesty to grant unto him a tract of land in America, lying north of Maryland, bounded on the east by Delaware bay, to the westward by the Indian countries as Maryland, and do not find that such boundaries do intrench upon the Lord Baltimore's province of Maryland, which is bounded southward by a part of Virginia, eastward by the main ocean and Delaware river, and northward by that part of Delaware river that lieth in the fortieth degree of latitude, and so by a direct line westward through the continent. And the patent granted to His Royal Highness, of New York being bounded westward by the east side of Delaware bay, is sufficiently distinguished from the grant desired by Mr. Penn, which is bounded eastwardly by Delaware bay or river; so that the tract of land desired by Mr. Penn seems to be undisposed of by his majesty, except the imaginary lines of New England patents, which are bounded westwardly by the main ocean, should give them a recall, though impracticable to all those vast territories. But I am further to offer unto your Lordships, that there are several Dutch and Swedish plantations, which



have been under the English government, that lie scattered on the westward of Delaware River, and some of them perhaps within the bounds of Mr. Penn's petition, and have for a long time, either acknowledged the protection of His Royal Highness, who took them from the Dutch upon the conquest of New York, or of Lord Baltimore, near whose borders they are settled; and how far Mr. Penn's grant may, in this consideration, concern his neighbors, is most humbly submitted to your Lordships.

It is to be observed, and it is for that purpose I have referred to them, that pending this important and protracted proceeding and investigation, Lord Baltimore presented before the committee of the privy council conducting it with the utmost deliberation and impartiality, no claim or pretension whatever to any of the settlements on the western side of the Delaware Bay and river, although every one then existing lay below the parallel of the fortieth degree of north latitude, and the only way in which their attention is directly called to that matter is to be found in the rather gratuitous allusion and suggestion of the attorney-general contained in the last lines of his communication to them; but even that recognizes the right and title of the Duke of York to them, as formerly Dutch and Swedish plantations or settlements held by the right of conquest, and his peaceable possession of them for several years prior to the application of Mr. Penn for his grant. But though not needed for such a purpose, because it is manifest from the moment the petition of Mr. Penn was read to them, they were well aware that Lord Baltimore's interests might be affected by it, and that

he might have grounds for objecting to it, it had the effect to bring this particular matter to their immediate and direct attention, and the care with which they proceeded to adjust the southern boundary of the province in reference to these settlements to the satisfaction of the Duke of York, indicated not only a clear and deliberate recognition of his right and title to them and to his Delaware or New Castle colony, but quite as clear and deliberate a repudiation and condemnation of Lord Baltimore's claim and pretension to them, on their part, under the circumstances. And such having been their final conclusion and decision in the case, it only became the stronger and more conclusive against the claim of Lord Baltimore when it was approved and confirmed by the king himself by the grant of the province to Mr. Penn. And well might it have been inferred from the course pursued by him during that inquiry, that his lordship had at last come to the conclusion to renounce tacitly, at least, all further claim to them. But scarcely had his royal highness parted with his title to them, thus recognized and sanctioned by such high authority, and soon afterwards further confirmed to him by a formal grant and letters patent than his pretension was revived by his lordship and his heir and successor, not to be definitively settled until nearly seventy years afterwards, and then only by a solemn decree in the High Court of Chancery in England against the validity of it.

The grant and letters patent from his Majesty Charles the Second to his brother, and heir presumptive to his throne, the Duke of York, to which I have just alluded, were made and delivered in due form in about two years

after the termination of the proceedings before the Lords of the Committee for the Affairs of Trade and Plantations, on the 22d day of March, 1683, and were for "all that the Town of New Castle otherwise called Delaware and the Fort therein or thereunto belonging, situate, lying and being between Maryland and New Jersey in America; and all that tract of land lying within the compass or circle of twelve miles about the said town, situate, lying and being upon the River Delaware, and all the Islands in the said River of Delaware, and the said river and soil thereof, lying north of the southermost part of the said circle of twelve miles about the said town; and all that tract of land upon Delaware River and Bay, beginning twelve miles south from the said town of New Castle, otherwise called Delaware, and extending south to Cape Lopen; together with all the lands, islands, soils, rivers, harbors, mines, minerals, quarries, woods, marshes, waters, lakes, fishings, hawkings, hunting, fowlings, and all other royalties, privileges, profits, commodities, and hereditaments to the said town, fort, tracts of lands, islands, and premises, or to any or either of them belonging or appertaining, with their and every of their appurtenances, situate, lying, and being in America, and all our estate, right, title and interest, benefit, advantage, claim, and demand whatsoever, of, in, or to the said town, fort, lands, or premises, or any part or parcel thereof, and the reversion and reversions, remainder and remainders thereof, together with the yearly and other rents, revenues, and profits of the premises, and of every part and parcel thereof; to have and to hold the said town of New Castle, otherwise called Delaware, and Fort, and

all and singular the said lands and premises, with their and every of their appurtenances hereby given and granted, or herein before mentioned to be given or granted, unto our said dearest Brother, James, Duke of York, his heirs and assigns forever." A nominal rent of four beaver-skins per annum, when demanded, being reserved therein to his Majesty, his heirs and successors. It also granted to him his heirs and assigns, the general powers of internal government over it, and of making laws and enforcing the same within its limits.

Prior to the date of it, however, the Duke of York had made and delivered to William Penn, on the 21st day of August, 1680, an indenture of lease for the term of ten thousand years for the town of New Castle, and the lands and the river about the same within the twelve mile circle surrounding it, and had afterwards, on the 24th day of August, 1682, sold and conveyed by his deed of feoffment all that the town of New Castle, otherwise called Delaware, and all that tract of land lying within the compass or circle of twelve miles about the same, situate, lying, and being upon the river Delaware in America; and all islands in the said river Delaware, and the said river and soil thereof, lying north of the southermost part of the said circle of twelve miles about the said town, and all the estate, right, title, and interest of his royal highness therein and thereto belonging; and also, on the same day, another deed of feoffment to him for all the land lying below the said circle on the river and bay, and extending from it to Cape Henlopen; and under both of which deeds of feoffment in fee to Mr. Penn livery of seisin was duly and formally made, and he

was thereupon put in full and complete possession of all the lands and all the river and soil thereof, and all the premises so sold and conveyed. A moiety of all the rents and profits thereof being reserved to the duke.

I should here say that the name of Pennsylvania bestowed on his province was not only suggested, but was insisted upon by the king, in an interview with Mr. Penn on the subject, in honor of his father, Admiral Penn, his own preference being that of New Wales,—Wales being the land of his nativity, and bearing some resemblance, as he thought, to his new province. And every Pennsylvanian, I think, ought to be satisfied that in that matter the king evinced better taste than Mr. Penn.

His arrival on the Delaware after the date of his deeds of feoffment was at New Castle, on the 27th day of October, 1682, where he was received by the inhabitants with a cordial welcome; and within three weeks afterwards he had writs issued for an election of representatives to a general assembly to be held at Chester, to which he had in the mean while changed its former name of Upland. We even then had three organized counties, named respectively New Castle, Jones, and New Dale, while Pennsylvania, by the operation of the twelve miles circle, had but one and no more, and the germ of that she had obtained from the liberality and generosity of the Duke of York, and from our own incipient little State. Pursuant to the call and writs issued elections were held, and the General Assembly, composed of members from the Province of Pennsylvania and the three lower counties (or "territories of the province," as they were soon after designated in contra-distinc-

tion to the province proper), convened at Chester on the fourth day of December following, and on the petition from the inhabitants of these counties asking for an act of union by the governor, and for their incorporation with the province in order to obtain the enjoyment of all the rights and privileges of it, such an act was passed at its first session, which was only for a few days. By the terms of it they were annexed to the Province of Pennsylvania as of the proper territory thereof; and it further provided that the people therein should be governed by the same laws, and enjoy the same privileges in all respects, as the inhabitants of Pennsylvania then enjoyed, or should thereafter enjoy. So that our little State first began its history by a close and cherished union with the great State of New York, and after that by another spontaneously sought with the great State of Pennsylvania; and being devoted to union of that kind from the start, it was quite natural that it should have stepped as promptly and spontaneously into the great union of the States as soon as the constitution of it was formed and presented for adoption. She has always been devoted to such union, and never tried secession but once, and then she made a complete and grand success of it, as we can all proudly and gratefully attest to this day.

Early in the ensuing month of January, 1683, the General Assembly again met, this time in Philadelphia, the Provincial Council having also assembled there a few days before. There were then six counties organized and represented in both bodies, three in the province and the same number in the territories, and to show the liberality and enlarged views of William Penn on the subject of legislative representation,

I will here simply state that by his original charter of government conferred upon the inhabitants of his province, and the act of settlement passed at the preceding session, each of these counties was represented by nine delegates in the General Assembly, and by three members in the Provincial Council, elected by what were then denominated the free-men of the county; but with the sanction of the governor and at the request of the Assembly, the former number was reduced to six for each county at that session.

Before I proceed any further, I should here remark that Cecilius, Lord Baltimore, died and was succeeded by his son and heir-at-law, Charles, Lord Baltimore, in 1676.

Meanwhile, between the sessions of the General Assembly before mentioned, Governor Penn, who had previously despatched a messenger to Lord Baltimore to arrange a meeting between them in relation to the boundaries of their provinces, joined him at West River on the 19th of December, 1683, where he found his lordship attended by a numerous suite, and who by his attention and civilities and the state with which he was surrounded, probably sought as much to impress the plain and simple proprietary of the adjoining province with his exalted character and power, as to flatter and please him with these demonstrations of respect for the like office and position which he held and enjoyed on the other side of the unsettled and disputed boundary which divided them. In their conference the next day Mr. Penn presented to him a letter from King Charles the Second, to the effect that Lord Baltimore had but two degrees according to his patent, and that, beginning at Watkin's Point, he should admeasure the degrees at sixty

miles to the degree, that being well and universally understood to be the extent of a degree of terrestrial latitude at that point when his letters patent were issued. To which he replied that the king was greatly mistaken, and that he would not abandon his patent to follow the king's letter, nor could a letter void his patent; and by that he would stand; and which was about the substance of all he had to say on the subject to the end of the conference. To which Mr. Penn rejoined that he thought the mistake was on his part, for though his patent began at Watkin's Point and went to the fortieth degree, yet that was assumed to be under the thirty-eighth degree, and if he had to start below that degree, then Virginia would be wronged. At this point of the colloquy, the uncle and chancellor of his lordship, who was present during the conference, remarked that his father's grant was not by degrees, as at first contemplated by him when he applied for it, for he had more of Virginia given him, but being planted, and the grant intending only land not planted, or possessed by any other than savage nations, he left it out so that it might not forfeit the rest. Upon which it instantly occurred to the mind of Mr. Penn that by that answer he could pretend nothing to Delaware which had been discovered, bought, and planted by the Dutch before that time, and so it could not have been intended to be included in it; but I must here observe that that was true only as to the purchase from Cape Henlopen to the mouth of the river and the settlement of De Vries's colony on the Hoorn Kill, so far as our side of the bay and river was concerned. And Mr. Penn also considered that even if his lordship's patent had in good faith and



according to the intention of it included any part of Delaware Bay and River, his lordship had forfeited his right to it by the long interval of time which had elapsed without any possession of it on his part, or reducing it to the sovereignty of England under which he claimed it, until the king at last had to do that, and therefore it was his to do as he pleased with it. Finding, however, that his lordship's mind was fixed on that point, he next proposed to him that though it was two degrees and a half from Watkin's Point to the fortieth degree of north latitude, at sixty miles to the degree, instead of seventy, yet if he would consent that the measurement should be computed at sixty miles to the degree, he would agree to commence at the fortieth degree, fall where it might. But his lordship dissented, and the conference was concluded without any compromise or adjustment of the matter.

In the month of May following he received a formal message from Lord Baltimore to meet him at the head of Chesapeake Bay, but his engagements preventing it, he met him a few days later ten miles west of New Castle, and thence invited and accompanied him to that place, where he entertained him as handsomely as the facilities of the town would afford; and finding that he was desirous of speaking privately with him only, he proposed that whatever communications were to pass between them should be in writing in the presence of their respective councils at their several lodgings, the better to avoid misapprehension or failure of memory in the progress of their negotiations on the subject. But his lordship deferred it, and excused himself on the plea that he was not well and would return to Maryland

as soon as he could, and reserve any further consideration of it for another season. Penn had learned, however, prior to that time, that he had issued a proclamation inviting settlers, under his authority and promise of protection as the proprietary of the Province of Maryland, into our counties at lower prices for land than he was offering them, and that the proclamation was attracting some attention in those counties. The next communication which he received from his lordship was a formal demand, by a special agent duly authorized to present it, of all the country south of the fortieth degree of north latitude, both in the Province of Pennsylvania and the three lower counties annexed to it, and the same being promptly refused, a party from Maryland, under the command of Colonel George Talbot, in the spring of 1684, made forcible entry on several plantations in the territory, and who even proceeded so far in this hostile invasion as to seize a piece of ground five miles west of New Castle, belonging to a gentleman by the name of Ogle, who had come over with Sir Robert Carr, and had participated in the capture of Fort Cassimer and the English conquest of the three lower counties, and erected a log fort upon it, raised a breastwork and built a palisade about it, and placed a force of armed men in it, and which he held for some time against the formal demands of the civil authorities at New Castle, in the name and under the commission of Lord Baltimore. In the mean while, the governor and council at Philadelphia instituted legal measures to reinstate the parties dispossessed, and to have the invaders prosecuted according to law, and a full account of which was forthwith addressed by letter from Governor Penn to

His Royal Highness, the Duke of York. His lordship must have felt himself by this time impelled by a stringent necessity to fortify his claim and title by some show of actual possession, or he would hardly have ventured at that late day, and after all that had happened, on such a rash and desperate expedient. But not long after this event Lord Baltimore returned to England, and Governor Penn, apprehending his purpose, and aware that the controversy concerning their boundaries would shortly be brought again before the Lords of the Committee for Trade and Plantations, soon followed him. In four months after his arrival in England Charles the Second died, and his brother James, Duke of York, peaceably succeeded him under the title of King James the Second of England, and after the delay which followed this event and two hearings before the Lords of the Committee, at which Lord Baltimore and Governor Penn were both present in person, and after full argument of the question before them, on the 13th day of November, 1685, they directed the following order of council to be entered: That the said lands intended to be granted by the Lord Baltimore's patent were only such lands as were cultivated or inhabited by savages, and that the part then in dispute was inhabited and planted by Christians at and before the date of the Lord Baltimore's patent, as it had been ever since that time, and continued as a distinct colony from that of Maryland, and so they were of opinion that for avoiding further difference, the tract of land lying between the River and Bay of Delaware and the Eastern Sea on the one side, and Chesapeake Bay on the other, be divided into two equal parts by a line from the latitude of

Cape Henlopen to the fortieth degree of north latitude (the south boundary of Pennsylvania by charter), and that the eastern half thereof be adjudged to His Majesty (viz., King James, who, when Duke of York, granted to Mr. William Penn), and the other half remain to the Lord Baltimore, as comprised in his charter. And this was not only afterwards recommended, but it was ordered by the king to be done in 1709.

I have now traced with too much prolixity, I am aware, the facts of the case and the history of this question from the first European or Christian settlement in this State down to the year 1685, but I do not propose to pursue it in detail any further, although sixty-five lingering years still remain, through which it slumbered for the most part in a state of comparative silence and suspension before we reach the ultimate conclusion and settlement of it. There is, however, one important and independent event in the history of our State which I will here notice before I proceed any further with the narrative of the question. The proprietary and governor, William Penn, had been long absent from the province and unavoidably detained in England by the state of his affairs and a succession of misfortunes and calamities there, from most of which the purity of his life and character should have been alone sufficient to have exempted him, and owing to that circumstance probably, as much as any other, jealousy and dissension had sprung up between the province and the territories, in the legislative as well as in other branches of the provincial government, in which the counties of the two portions of the whole territory being equal in number, and also in representation, there was, of

course, from the beginning a very delicate and sensitive equipoise of power between them in that branch of it. And besides, from the very start the province had not only been increasing in population and wealth more rapidly than the three lower counties, but more so than any other English colony or province in America. And yet, strange to say, notwithstanding this fact, the first manifestation of invidious feeling, or spirit of sectional jealousy exhibited by the one towards the other in the General Assembly, was on the part of the province towards the territories. Governor Penn had sadly disappointed the hopes and expectations of New Castle, and of many in the three lower counties also, when he passed by such a magnificent site as that of New Castle, and went so far above it, into the woods and among the Indians, to found a great city and a great capital for his fine province: but for that very reason, in part at least, he had conceived from the first a kinder regard for the place, and a stronger desire to promote its welfare and prosperity as far as it was in his power.

Actuated by this, as well as by other considerations, he had occasionally called and convened the General Assembly at New Castle before his departure for England, and having returned after an absence of nearly fifteen years, during which period much dissatisfaction with certain proceedings of the council of the government having arisen in the three lower counties, in December, 1699, he issued his next call for the General Assembly to meet in New Castle in the fall of 1700, with a view, it is said, to conciliate and reconcile this dissatisfaction. It was not his custom to address them by written messages, but when they assembled he went be-

fore them in person, and generally in a brief speech recommended such measures as he deemed advisable, and the one he made at the commencement of the session I am now speaking of is comprised in seven printed lines. It recommended an amendment of the frame of government, a revision and completion of the body of laws, and particularly for the settling of property, a supply for the support of government, and closed with these words, "I recommend to you amity and concord among yourselves." The members were all very happy to meet him, and the session was harmonious, and closed apparently to the satisfaction of all its members, both from the province and from the territories. There was among other statutes a general revenue act passed at that session, applicable alike to the province and the territories.

The next session I shall refer to was called by him to meet in Philadelphia on the 15th day of September, 1701. In the mean while there had been another general election of its members, with an increase in their number from the province, and which, of course, for the first time transferred the preponderance of power in the body to that section. But to the surprise of members from the three lower counties, not long after it had assembled an act was introduced by two members of the council elected from the province to confirm the revenue act before mentioned and all the acts passed at the preceding session of the Assembly held at New Castle in 1700, on the ground that such a confirmation at a session held in the province was necessary to give them any force or effect in the province, or in other words, that it was not competent for the body when sitting in the territories,

though composed of all its members, and so sitting under the call of the proprietary and governor, to pass any law to bind the province or the inhabitants of it. Such an arrogant assumption and pretension, and such a foregone conclusion to subordinate and degrade the territories to a condition so inferior to that of the province, and so manifestly contrary to the basis of equality on which the union of the two sections had been formed in that respect, suggested as it was for the first time immediately on the province attaining a majority in the body, met of course with all the indignant and vehement resistance from the representatives of the territories which it so well deserved. It was, however, insisted on and sustained by the unanimous voice of the members from the province, and when on the 10th of October it was put upon its first vote, the entire delegations present from New Castle and Kent counties, numbering nine members, arose from their seats and retired from the chamber. The vote was then immediately taken on the bill, and it was passed by the remaining members, consisting of twelve from the province and two from Sussex, no others from that county attending at the session. But wherefore the two who remained did not retire also history saith not. The retiring members however reappeared in their seats five days afterwards, and on being interrogated, answered that they were willing to join with the other members, provided they might have liberty to enter their dissent to the bill for the confirmation of the laws, "and nothing might be carried over their heads by over-voting them;" and declared that they were willing to anything for the good and tranquility of the government, and then

withdrew. They were afterwards recalled into the House again, and were told they should have liberty to enter their dissent to the bill referred to, but for the House to promise not to over-vote them, it was a thing so unheard of, and such an infringement of the rules and privileges of assemblies, the House could not yield to that demand. The reading of the bill three times over was then proposed, when the dissenting members departed from the House again. By conference on the part of the House and the mediation of the governor with the absenting members, an accommodation was afterwards affected, and they returned to their seats in the House a few days before the close of the session and declared their dissent to the bill which had been finally passed in their absence, and continued to perform their functions and duties as members for the remainder of it. But all foreseeing that this was not the end of the disruption threatened, amendments were incorporated in the charter of privileges originally granted by the proprietary and governor to the inhabitants of the province and territories on their union as one under his government, providing for and sanctioning in advance on his part their legislative separation and the establishment of a distinct legislative assembly, both in the province and in the territories, and which was afterwards completely accomplished by each of them within the time and in the mode provided for. And after the close of the session of 1701, the members of the Assembly for the province, and the members of the Assembly for the territories, or the three lower counties on Delaware, as they were now generally called, never met again in joint session, or as one body; and for all the purposes and powers of govern-



ment, legislative, judicial, and ministerial, they became entirely separate, distinct, and independent of each other, the only remaining governmental link or ligament connecting them together being one and the same proprietary and governor over both of them from that time until the declaration of American independence.

I now descend through the silence of the intervening period before alluded to in reference to the particular matter under consideration, to the year 1732. Both William Penn and Cecilius, Lord Baltimore, had been gathered to their fathers years before this time, leaving this unsettled question as an unfortunate legacy and yoke of discord to vex and perplex their descendants and heirs-at-law, when a change at length seemed, for a time at least, to come over the spirit of the succeeding Lord Baltimore, the third from Cecilius, and articles of agreement under seal executed in England on the 10th day of May, in that year, were entered into between the heirs of Governor Penn and his lordship, to settle this dispute on the basis recommended by the Lords of the Committee for Trade and Plantations and commanded by the king, which I have already read to you. The articles of agreement were accompanied with a map or plan of the territory to be divided under them, and which related solely to our peninsula, as high up as the northern and circular boundary of our State, which Lord Baltimore's agents, by his directions, had prepared for the purpose before the agreement was entered into, and which was annexed and specially referred to in the agreement for places and points mentioned in it; and upon that plan Fenwick's Island was named and designated as Cape Henlopen, and

from that island as the place of beginning, by the terms of the agreement, a line was to be run due west to the Chesapeake Bay, and from the middle of that line a direct line was to be run in a northerly direction until it struck as a tangent a circle of twelve miles, to be drawn about the town of New Castle, and from the point of contact of that tangent and circle a line was to be run in a due north direction, to the point where it would be intersected by a line to be run in a due west direction from a point fifteen miles south of Philadelphia, with the qualification or proviso that if the said line to be run in a due north direction should cut off any part of the said circle, such part of the circle should constitute the boundary of division. And the boundaries were to be marked by stone pillars to be set up on it. By the terms of the agreement, also, commissioners were to be appointed by the parties to do this on or before the 25th day of December, 1733, and for want of a quorum of commissioners to meet at any time for that purpose, the party, by default of whose commissioners the articles could not be carried into execution, should forfeit to the other the penalty of five thousand pounds; and when done the parties were to make conveyance to each other for their several and respective portions of the territory to be divided by it between them.

But for eighteen years more the question still remained unsettled, when at last a bill was filed in the High Court of Chancery in England by the heirs of William Penn against Lord Baltimore, for the specific performance and execution of the articles of agreement, all the parties then being in that country, which was resisted by his lordship, and after

it had been duly prepared for trial, and all the evidence had been taken on both sides, was finally heard and decided by Lord Chancellor Hardwick in 1750. It was very thoroughly and elaborately argued by able counsel on both sides, and as the counsel for the defence endeavored to avoid the obligation of the agreement, they entered into the consideration and discussion of the whole question, from its earliest origin, and as it stood before the agreement had been entered into, and in which they were followed by the counsel on the other side. The jurisdiction of his honor, as the Lord High Chancellor of England, to try such a case of disputed claim to real estate and a princely province in the remote regions of America, was of course questioned and denied, and was among the first grounds of defence earnestly urged by the counsel for his lordship, in reply to which, in announcing his final opinion after the closing of the case, he took occasion to pay our three lower counties the following flattering compliment in a classical allusion, which for dignity and elegance was never surpassed, I am sure, by anything that ever fell from a Lord Chancellor in England. It is in the opening paragraph of his opinion, and as it strikes the key-note of the whole of it in the very first line, I will repeat it: "I directed this case to stand over for judgment, not so much from any doubt of what was the justice of the case, as by reason of the nature of it, its great consequence and importance, and the great labor and ability of the argument on both sides; it being for the determination of the right and boundaries of two great provincial governments and three counties; of a nature worthy of the judicature of a Roman Senate rather

than a single judge, and my consolation is, that if I should err in my judgment, there is a judicature equal in dignity to a Roman Senate that will correct it." And that judicature to which he referred, of course, was the House of Lords in England. But when we reflect that that decision, which practically settled this question forever, and saved our territory from the persistent and pertinacious effort of Lord Baltimore and his ancestors to absorb it in his Province of Maryland, had the direct effect, in the due course of the historical and political events which soon followed it, to make those three counties, in sixteen years from that time, a sovereign and independent State in the first confederation of the United States of America, the justice as well as the dignity of it becomes still more appropriate and striking.

The obligation of the agreement had been denied in the answer and in the argument on the ground of mistake and surprise on the part of Lord Baltimore, who did not know, as it was contended, at the time of entering into it, the superiority of his own claim over that of the complainants to the three lower counties; and as to the alleged misrepresentation in the petition of the first Lord Baltimore for the grant of the province, they further contended that there had been no such Dutch or Christian settlement proved to have been established at the Hoorn Kill or elsewhere within their limits prior to and at the time of the issuing of his letters patent as could invalidate his grant on that ground; and even spoke of De Vries's colony as consisting of mere stragglers there, without the knowledge, recognition, or sanction of the king. But, on the evidence in the case, the Lord Chancellor overruled both objec-

tions, and on the latter remarked that if they had been but stragglers settled there, yet if they had set up marks of possession on the soil, though not expressly recognized by the Crown as a settlement, it would have been sufficient to constitute the misrepresentation a deceit on the Crown. And although he sustained the agreement and decided the case upon it, still, as the bill and answer and the argument of counsel had placed the history of the whole case before him from its inception, he took occasion to review and consider it in the opinion delivered by him, in which he held that the relief prayed for in the bill was the ordinary equity dispensed in that court, the specific performance of an agreement for the settling and fixing of boundaries in peace, to prevent disorder and mischief, which in remote countries distant from the seat of government were most likely to happen and prove most mischievous. That his court had no original jurisdiction on the direct question of the original right of the boundaries, but the bill did not stand in need of that, because it was founded on articles of agreement executed in England under seal for mutual considerations, which gave jurisdiction to the King's courts, both of law and equity, whatever might be the subject-matter. The conscience of the party was bound by the agreement, and being within the jurisdiction of that court, which acted *in personam*, the court might properly decree it as an agreement if there was a foundation for it.

But the settling of the limits was not a dismembering of a province, and if a license from the Crown were necessary in law or policy to do that, it sufficiently appeared by orders in council made in 1685 and 1709, that the Crown had not

only recommended, but ordered this division to be made, so far as respects the three lower counties, as to which there was no dismembering, for the dividing line was there exactly the same; indeed, the circle was not within those orders. But as to that no difficulty could arise. The articles were not like a submission to arbitration. In those cases generally the time is conditional, so as determination be made by a certain day; but here the line and circle are agreed on by distinct, independent covenants, and that they shall form the boundaries of these tracts of land. That therefore, was a particular, certain specific contract of parties that those should be the boundaries. There was nothing left to the judgment of the commissioners, who were merely ministerial agents to run the lines according to the agreement, and set the mark. Therefore it was not like an award, but an agreement which this court would see pursued.

As to any imposition or surprise, the evidence was clearly contrary thereto. It would be unnecessary to enter into the particulars of that evidence; but it appeared that the agreement was originally proposed by the defendant himself; he himself produced the plan afterwards annexed to the articles; he himself reduced the heads of it to writing, and was very well assisted in making it; and further, that there was a great length of time taken for consideration and reducing it to form. Then was he to presume that he was imposed on in a plan, too, sent to him by his own agents; as to the plan itself, it was in his own power. A plain mistake, without imposition or fraud, would be a ground for not decreeing a specific performance. But the evidence shows that the defendant and his ancestors were conversant with

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this dispute about fifty years before the agreement was entered into; therefore no ignorance, want of information, or mistakes were to be presumed. And in cases of that kind after an agreement, and plain mistake contrary to the intent of parties not shown, it was not necessary for the court to resort to the original right of the parties; it was sufficient if it were doubtful merely.

To consider the points in dispute, and first upon the defendant's charter, on which it was insisted that the whole of the fortieth degree of north latitude was included, and if so, it was not to be limited by any recital in the preamble. There was great ground for saying that the computation of latitude at the time of the grant varied much from what they were then, and that they were at that time set much lower than at present. But whatever that was, did it take the whole of it in by description? It came to the question whether the *usque ad* was inclusive or exclusive; therefore, however described, the same question remained.

But there was another argument advanced by the plaintiffs to restrain the defendant's charter from taking in the whole fortieth degree, viz., the recital of it, because they say the information given to the Crown by Lord Baltimore was that this part was land uncultivated and possessed by barbarians; whereas it was not so, but was possessed by Dutch and Swedes, and therefore the king was deceived in his grant. There was considerable evidence that Dutch and Swedes were settled on the east part of that country. But that was said to be no deceit on the Crown; for, though some stragglers were settled there, yet if not recognized by the Crown, that was not a settlement. He was of a different opinion.

For in those countries it had been always taken that the European country which has first set up marks has gained the right, though not formed into a regular colony. And that was very reasonable on the argument on which they proceeded. Then would not that affect the grant? If the fact were so, that would be as great a deceit on the Crown in notion of law as any other matter arising from the information of the party; because such grants tend to involve this Crown in wars and disputes with other nations; nor could there be a greater deceit than a misrepresentation tending to such a consequence, which would be a ground to repeal the letters patent by *scire facias*.

Next consider the dispute on Penn's charter, which grants to him all that tract of land in America from twelve miles distance from New Castle to the forty-third degree of north latitude, under which the plaintiffs do not pretend a title to the three lower counties, which relates to the two feoffments in 1682. Upon that title it is clear by the proof that the true situation of Cape Henlopen is as it is marked in the plan annexed to the articles of agreement, and not where Cape Cornelius is, as the defendant insists, which would leave out a great part of what was intended to be included in the grant; and there was strong evidence of seizin and possession by Penn of that spot of Cape Henlopen, and of all acts of ownership in regard to it. But the result of the evidence, taking it in the most favorable light for the defendant, amounts to making the boundaries and rights of these parties doubtful, and being so, it was the most proper case for an agreement, which being entered into, the parties could not resort back to the original rights between them,



for, if so, no agreement could stand; whereas an agreement entered into without surprise ought to be encouraged by a court of justice.

In relation to the coterminous boundary of this State and New Jersey, I would remark that, inasmuch as the original grant from the king to the Duke of York was of all the territory from the river St. Croix to the east side of the Delaware Bay, and his later grant to him subsequent to the Delaware conquest, of the town of New Castle, and all the lands embraced within the compass or circle of twelve miles surrounding it, together with all the islands in the river Delaware and the said river and soil thereof lying north of the southernmost part of the said circle of twelve miles about the said town, it has always been considered and held in this State that, when we come to inquire for and ascertain the boundary between the two grants where they abut on each other, they must, of course, be read and construed together with strict reference to the manifest import of the terms employed in each to designate their respective limits, and the extent of territory, land, and soil intended to be granted and conveyed in each of them respectively; and as the former is to extend to the east side of the Delaware Bay, which was then and has ever since been understood to include the Delaware River also (otherwise the grant would not have extended to the river, but to the bay only), and the latter conveys not only the town of New Castle and all that tract of land lying within the compass or circle of twelve miles from the said town, situate, lying, and being upon the river Delaware, but also all the islands in the said river Delaware, and the said river and soil thereof

lying north of the southernmost part of the said circle of twelve miles about the said town, it extends to the east side of the river likewise within the circumference of the said circle; for it was as clearly the intention of the king to convey to the duke in the second grant, with the town of New Castle and the lands about it as limited and described, that part of the river itself, and the soil thereof, or the bed thereof, to the east side of it lying within the circle, as it was his intention to convey to him in the first grant all the land on the other side of it to the east side of the Delaware Bay. And such is the construction we have always given to the two grants, and the courts of our State have from the earliest period claimed and exercised jurisdiction over that part of the river to low-water mark on the east side of it, as a rightful portion of the domain of our State, and as much so as any other part of it claimed under that or any other grant. And the construction which we have thus give to it is in accordance with the construction which has been uniformly given to similar grants in analogous cases in the highest courts of the United States. But without that express grant of the river itself, and the subaqueous soil, or bottom of it within the compass or circle designated, the second grant would have been controlled by the general principle of legal construction applicable in such cases, and would have extended *ad filum aqua*, or to the channel, or the middle of the river only.

But we derived our title to it immediately, not from the second grant of which I have been speaking, but from the deed of feoffment in the same terms from the Duke of York to William Penn for the same possessions, the essential

portion of which I have before read to you, and which I then stated to you was executed and delivered to him before the grant for the same had been made to the duke by the king, although he had been placed in full possession and command of them as absolute owner, proprietary, and royal governor of them by the king eight years prior to the sale and conveyance of them by him to William Penn, and had so been in the possession of them for eight years when he made that sale and conveyance to Penn. And as this was, among others, made a matter of particular objection before Lord Chancellor Hardwick in the case before mentioned, and from which I have already read so largely, by the counsel for Lord Baltimore to the ability of the heirs of William Penn to make a good and sufficient legal title to him for any portion of the territories in dispute between them, in case his lordship should decree a specific execution of the article of agreement, you will excuse me for now reading what the Lord Chancellor said in regard to that matter.

“As to the plaintiff’s estate and possession, this must concern only the three lower counties which plainly passed by the feoffment. I will lay aside the question of estoppel, which is a nice consideration, for the Duke of York being then in the nature of a common person, was in a condition to be estopped by a proper instrument. In 1683 the Duke of York takes a new grant from the Crown, and having granted before, was bound to make further assurance; for the improvements made by Penn were a foundation to support a bill in equity for further assurance. The Duke of York, therefore, while a subject, was to be considered as a trustee. Why not afterwards as a royal trustee? I will not

decree that in this court, nor is it necessary; but it is a notion established in courts of revenue by modern decisions that the king may be a royal trustee; and if the person from whom the king takes by descent was a trustee, there may be grounds in equity to support that; and if King James the Second, after coming to the crown, was a royal trustee, his successors take the legal estate under the same equity; and it is sufficient for the plaintiffs if they have an equitable estate. Then consider this in point of possession of the Penns, the proof of which is very clear. They have been permitted to appoint governors of these lower counties, which have been approved by the Crown, according to the statute of King William. Indeed, all the acts of possession are with a *salvo jure* to the Crown. But the evidence for the defendants amounts to this. Not a real possession or enjoyment, but of attempts to take possession, sometimes by force, sometimes by inciting people to come there; otherwise why should Lord Baltimore grant here for half what he granted in other places? Which shows plainly that it was an invitation to get settlers there under their title. But what ends this point of want of title to convey is, that no part of the lower counties is left to be conveyed by the plaintiffs to the defendant; so that nothing being to pass by plaintiffs, it is not material whether they have title to convey or not. But now, in cases of this kind, of two great territories held of the Crown, I will say, once for all, that long possession and enjoyment, peopling and cultivating countries, is one of the best evidences of title to lands or districts of land in America that can be; and so have I thought in all cases since I have served the Crown;

for the great beneficial advantages arising to the Crown from settling such regions is that the navigation and commerce of the country is thereby improved. Those persons, therefore, who make these settlements ought to be protected in the possession as far as law and equity can; and both these proprietors appear to have great merit with regard to the Crown and the public, for these two provinces have been improved in private families to a great degree, to the advantage of their mother-country; this regards the three lower counties, the strength of which is vastly on the side of the plaintiffs."

Another very kind and complimentary allusion to the worth of our infant little State, of which we may well feel proud, for it certainly ought to be eminently gratifying to us, even at this day, to know that so good and a great a man, and such a profound and able jurist and statesman as Lord Chancellor Hardwick entertained such a kind and favorable opinion of us at that early period. I apprehend, however, that his distinguished lordship could have had but little, if any, presentiment in his noble mind that the same radiant little gem which he was just then contemplating with such a high and favorable estimate of its value was so soon to be wrenched by an unlineal hand, with all its other and still more resplendent American jewels, from that same magnificent crown which he was then serving with so much ability, admiration, and devotion in that exalted station.

But to return from this digression, I will simply add on the point from which I was diverted, that all the equities involved in the question presented are clearly in our favor; and perhaps, before an equity tribunal, among them there is none more deserving of attention than that alluded to

by his lordship in analogy to a plea of estoppel in law. Both States, New Jersey and Delaware, derive their legal title from the same noble grantor, he derived his to both estates immediately from the Crown, to which he himself succeeded so soon after selling to Penn, and after obtaining his legal title for the same from the Crown, and the death of Charles the Second occurring so soon and suddenly and unexpectedly after that, there was scarcely a reasonable time left under all the circumstances for obtaining a conveyance of further assurance from the Duke of York before he became king; and after that there was no method of compelling it, if he either neglected or declined to make it. But since that decision it has been ruled and established under the sanction of such names as Lord Mansfield's and Lord Kenyon's, that even in the courts of law of that kingdom such a trust would be presumed to have been surrendered by the holder of the legal title for the security of the equitable owner of the estate after such a long possession of it by him.

The decree in the case of *Penn vs. Lord Baltimore* was for a specific performance and execution of the articles of agreement, which finally settled (practically, however, only, it seems) the long vexed and perplexing question in relation especially to what now constitute the coterminous boundaries of this State and the State of Maryland, and under it the same were run, marked with stone pillars one mile apart, and established in conformity with the terms of the agreement.

But to complete the present narrative of the subject, I think it but just and proper out of the respect which I

entertain for that State, and the favorable opinion and regard which its citizens have always cherished for the character and memory of their provincial proprietaries, and in extenuation of what would seem to have been the perverse and obstinate spirit so long maintained and manifested on the part of the chief of them against any amicable settlement of the controversy, to quote again from the opinion of Lord Chancellor Hardwick, what he finally said in the conclusion of it in relation to the last of them, and as a matter throwing some further light on this interesting portion of its history. It was more particularly with reference to his refusal to execute the articles of agreement and resisting the suit that he remarked when considering the question of costs in the case,—

“But in America the defendant’s commissioners behaved with great chicane in the points they insisted on (when they had met for the purpose of performing the duties devolved upon them by the articles prior to the institution of the suit), as the want of a centre for the circle about New Castle, and the extent of that circle, viz., whether a diameter of two or of twelve miles, the endeavoring to take advantage of one of the plaintiff’s commissioners coming too late to make the plaintiffs incur the penalty. The defendant has been misled by his commissioners and agents in America to make their objections his defence, which brings it nearer to himself; and although he would not at all have thought of it as from himself (so that I impute nothing in the least dishonorable to him), yet I must take it as his own act; and then should not do complete justice if I did not give plaintiffs the costs of this suit to this time, to be taxed, reserving subsequent costs.”

The execution of the decree by the commissioners and the surveyors, Messrs. Mason and Dixon, in running, marking, and establishing the boundary, was not completed until the year 1768, nor was it confirmed by the king and by orders in council until the month of January in the following year, and it was not until the 8th day of April, 1775, that the Governor and Commander-in-Chief of the Three Lower Counties and Province of Pennsylvania published his proclamation requiring all officers and other persons residing on our side of it, as thus established and confirmed, to yield obedience to the laws of the said counties and govern themselves according thereto, and which was followed by the act of the Legislature reciting the foregoing proceedings, and extending the divisional lines of the counties through the newly-acquired strip of territory from their former western termini to the boundary so established, and to all persons inhabiting it as the lately disputed lands of this government all the immunities, rights, liberties, and privileges which they could or might be entitled to as if they had always been acknowledged actually to have resided within the same, and which was not passed until the 2d day of September, 1775, and which was the last statute but two enacted under the proprietary government by the Honorable John Penn, Esq., with his Majesty's royal approbation Governor and Commander-in-Chief of the Counties of New Castle, Kent, and Sussex upon Delaware, and Province of Pennsylvania, by and with the advice and consent of the representatives of the freemen of the said counties in General Assembly met, and by authority of the same.


And now these massive stones and monumental marks just



planted upon the boundary and duly confirmed and ratified with all the forms and ceremonies of the law, are already beginning to shake and tremble with the earthquake throes of a great upheaval, for we are now on the very verge of the American Revolution. On the 4th of July following the Declaration of Independence was adopted in the Congress of the United States, and in glad response to it and under the majesty of its sanction, by the 20th of September following the freemen of the three lower counties upon Delaware had, by their delegates duly chosen and in convention assembled, framed and adopted a constitution of government as a free, independent, and sovereign state of the world, under the name and style of The Delaware State. But for that we were indebted in a peculiar manner and degree to that Congress of the United States and to the Declaration of Independence, and as no other of the thirteen States that came out of it was; for we entered it as the territories or three lower counties of the Province of Pennsylvania upon Delaware, by virtue of the executive and proprietary ligament which then connected us to it; but that was severed by the word of the Declaration, on the faith of the sword that was instantly drawn to complete and consummate it, because all the powers of government which William Penn or his heirs or lieutenants had ever possessed, either in the province or its territories, were conferred by and held at the will and pleasure of the King of Great Britain, our king as well as his king up to that moment, and when his Majesty ceased to be our sovereign, he and his heirs and his deputies ceased, of course, to be our governors. Their subordinate powers, of course, perished with

the sovereignty on which they solely depended. And the last link which bound us to the Province of Pennsylvania, was at the same time dissolved with it. But suppose there had been no legislative secession and separation from the province prior to that, we should have still remained the three lower counties of the State, instead of the Province of Pennsylvania upon Delaware; or, on the other hand, suppose Lord Chancellor Hardwick had ruled and decided in the case referred to, in favor of, instead of against, the claim and pretension of Lord Baltimore, we should have gone into that Congress and come out of it, and been to this day nothing but three more counties added to the Eastern Shore of the State of Maryland.

And now after this presentation of the history of the subject, have I erred in the conclusions to which it has conducted me, or over-estimated the significance and importance of the three great events which I have regarded as the most fortunate and momentous in their consequences and results that have ever occurred in our history up to the date of the Declaration of Independence; the settlement at the Hoorn Kill prior to the date of Lord Baltimore's patent, the legislative separation from the Province of Pennsylvania, and the decree of the High Court of Chancery in England in the celebrated case to which I have referred so much at large? They made us a constituent and co-ordinate member of the great republic of the United States of America, and certainly constitute the three golden links, both in our colonial history and in our colonial destiny.









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